



# Ofcom's Consumer Policy

A consultation

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\* Annexes 5 and 6 are available to download at: [www.ofcom.org.uk](http://www.ofcom.org.uk) or as a separate document – Of 290a

## Section 1

# Executive summary

- 1.1 Under section 3(1) of the Communications Act 2003 (the 'Act'), it is Ofcom's principal duty, in carrying out its 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.'
- 1.2 The purpose of this Consultation Document is to:
- set out Ofcom's approach to the promotion of consumer interests; and
  - elicit stakeholder views on a number of issues and options related to consumer policy.
- 1.3 This Consultation also addresses a number of issues arising from the Telecoms Strategic Review (TSR), relating to consumer information and switching, and puts forward proposals for future regulatory action. Overall, this Consultation aims to identify the objectives and priorities that should drive Ofcom's consumer policy over the next two to three years.

## Scope

- 1.4 This Consultation sets out Ofcom's approach to consumer policy, except in relation to broadcast content and operational aspects of spectrum management. Our approach to consumer issues relating to TV and radio content is considered in the Public Service Broadcasting Review and the Radio Review, which can be found on Ofcom's website<sup>1</sup>.

## Consumer and citizen interests

- 1.5 In Ofcom's view, there is a close relationship between consumer and citizen interests. This is partly because each of us acts as both a citizen and a consumer, and partly because our interests under these headings frequently overlap. A distinction between consumer and citizen interests can nevertheless be drawn as follows:
- 1.6 Consumer interests arise following the establishment of a market, in which individual consumers make decisions about the acquisition and/or use of goods and services, which are provided by suppliers. The establishment of a market creates options for consumers, about whether to purchase or use particular goods and services, and if so in what quantity or with what frequency. The relationship between consumer and supplier is typically a direct commercial one, but may not be. For example, the relationship between a consumer and a supplier of premium rate services can very often be indirect, with revenues typically being channelled through several intermediaries to the service provider.

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<sup>1</sup> [http://www.ofcom.org.uk/tv/psb\\_review/](http://www.ofcom.org.uk/tv/psb_review/),  
[http://www.ofcom.org.uk/consult/condocs/radio\\_review/radio\\_review2/?a=87101](http://www.ofcom.org.uk/consult/condocs/radio_review/radio_review2/?a=87101)

- 1.7 As citizens, on the other hand, we have a shared, collective interest in a range of issues which are beyond the market, but which also have a major influence on our lives. Within the communications sector, examples include our interest in the universal availability of basic communications services, and in access to a diversity of opinions about news and current affairs. Issues such as these affect us collectively, rather than purely through a market mechanism as individuals.
- 1.8 Given this distinction, our interests as consumers may at times conflict with our interests as citizens, for example our private consumer interest in driving cars may conflict with our interest as citizens in tackling global warming. In other cases, it may be difficult to disentangle each person's identity of interest as a citizen or a consumer. Policies such as Universal Service Obligations in telecommunications and Public Service Broadcasting, for example, speak directly to the rights and benefits of citizenship but also involve impacts upon markets, which have implications for the consumer. The two sets of interests are in practice closely intertwined.

## Objectives of Consumer Policy

- 1.9 Ofcom considers that the overall objective of its consumer policy should be, within the confines of its statutory duties, functions and requirements:

*To work together with other organisations and industry to ensure that consumers benefit from increasingly competitive communications markets, are effectively protected from financial and physical harm, unreasonable annoyance and anxiety, and have the information and tools necessary to make informed choices.*

- 1.10 The objective should be to create an environment in which:

- Consumer interests are fully and consistently taken into account in the development and evaluation of policy, supported by appropriate evidence on the state of consumer opinion;
- Consumers have access to clear advice on their rights, and to effective complaints handling procedures and redress;
- Regulatory obligations on suppliers provide an adequate level of consumer protection, without imposing an undue burden whilst being objectively justifiable, not unduly discriminatory, proportionate and transparent;
- Compliance monitoring and enforcement are fair, consistent, effective and proportionate;
- Consumers are equipped with the information, skills and confidence needed to obtain a good deal; and
- Due consideration is given to the needs of vulnerable consumers, to ensure that they are not disadvantaged by the operation of the market.

- 1.11 In relation to vulnerable consumers, Ofcom recognises that each of us may be vulnerable to harmful supplier behaviour at some time or other. However, Ofcom considers that, where there is evidence that a particular group of consumers – such as children, older people, disabled people, or those on low incomes - is systematically more likely to be vulnerable to harm than others, this should be taken into account in the formulation and implementation of consumer policy. That is to say, it may be appropriate to give greater weight to the interests of such vulnerable groups when determining the course of regulatory action.

- 1.12 Ofcom invites stakeholders to comment on this objective and the desired outcomes listed above.
- 1.13 Given these objectives, Ofcom considers that its approach to furthering consumer interests has three elements:
- integration with competition policy: ensuring that competition policy takes sufficient account of consumer interests and behaviour;
  - consumer protection: protecting consumers against financial and physical harm, unreasonable annoyance and anxiety; and
  - consumer empowerment: equipping consumers to obtain the best deal they can.
- 1.14 Ofcom proposes to publish an annual review of consumer interests in the consumer and business market, which would pull together evidence from a variety of sources on how well the consumer is being served in communications markets.

### **Integration with competition policy**

- 1.15 A central plank of Ofcom's approach to consumer policy is that consumer interests can in general best be served by promoting effective competition in the provision of communications services. This is consistent with Ofcom's obligation under the Act to further the interests of consumers "where appropriate by promoting competition".
- 1.16 However, consumer preferences and priorities can vary significantly, between different individuals or groups, between markets and over time. Ofcom therefore considers it essential, when developing competition policy, to take account of empirical evidence on consumer preferences and priorities in the markets concerned. This is already one of the main drivers of Ofcom's market research programme. Looking ahead, Ofcom believes the priorities in this area should be:
- to improve the level of coordination and communication between Ofcom and consumer organisations such as Consumer Direct, the National Consumer Council (NCC) and Which?, through regular meetings and the open exchange of information. This will help to ensure that Ofcom takes full account of the evidence available to these organisations, and to the insights they can provide.
  - to improve Ofcom's internal processes and procedures, to ensure that explicit account is taken of the relevant consumer interests when carrying out competition policy projects. This work will build on the findings and recommendations of a report which has recently been published by the Ofcom Consumer Panel<sup>2</sup>.
- 1.17 Stakeholders are invited to comment on these proposals.

### **Consumer protection**

- 1.18 Consumer protection is particularly challenging in the communications sector, because modern communications systems provide ineffective or dishonest providers with easy and efficient access to consumers, and because new technologies can give

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<sup>2</sup> "Capturing the consumer interest – a toolkit for regulators and government", published by the OCP on 2 February 2006.

rise to new forms of harm. Though desirable in other respects, the growth of competition can also contribute to consumer protection problems, as it can lead to a rise in unfair selling practices and may be associated with an increase in "hit and run" behaviour by dishonest providers.

1.19 In recent years, consumers have been affected by a range of issues, including for instance rogue internet diallers, silent calls, mis-selling, and misleading advertising. In response to these problems, Ofcom has adopted an increasingly vigorous approach to consumer protection, involving the active enforcement of existing regulations and the implementation of measures to tackle new issues as they emerge. The actions which have been taken include the following:

- introducing tough new rules to combat mis-selling and slamming: following a consultation process, new rules have recently been introduced requiring all providers of fixed line telecommunications services to residential customers and SMEs to establish sales and marketing codes of practice, which are consistent with guidelines published by Ofcom. These codes of practice are designed to ensure that consumers are protected against undesirable sales and marketing techniques, including slamming. Ofcom has been actively monitoring compliance with this obligation and a number of enforcement actions are currently underway.
- reducing the potential for silent calls and the distress they cause to consumers: having had some limited success with voluntary measures, Ofcom used its powers under the "persistent misuse" provisions of Communications Act to investigate seven companies involved in generating silent calls. The investigation led to notifications being issued to four companies and written undertakings being provided by one company. Another company stopped accepting contracts to send unsolicited fax communications.
- improving the effectiveness of PRS regulation: following a growth in consumer concerns over PRS scams, and particularly those involving rogue internet diallers, Ofcom carried out a review of PRS regulation, the results of which were published in December 2004. Since then, Ofcom has been working closely with ICSTIS and the DTI to implement the recommendations which emerged from the review, and this has enhanced ICSTIS's ability to take effective action against those involved in PRS scams.

1.20 Ofcom has also been actively engaged in the development of new policies designed to address consumer issues in a rapidly changing market. Initiatives of this kind include the following:

- a policy document is due to be published in the near future, setting out proposals to deal with consumer protection issues associated with the growth of VOIP services. These concern, in particular, access to emergency services;
- as part of an overall review of numbering policy, Ofcom will be consulting shortly on the possibility of introducing a public interest test when allocating numbers to communication providers. The purpose of such a test would be to enable Ofcom, in certain circumstances, to refuse applications for new number blocks from providers who had previously breached consumer protection regulations;
- as part of its current number translation services (NTS) policy review, Ofcom is consulting on a range of proposals designed to improve consumer protection in

relation to calls made to 08 numbers<sup>3</sup>. The proposed measures include restricting adult services to designated 09 number ranges and the extension of ICSTIS's remit to include calls made to 0871 numbers;

- Ofcom is currently consulting on a proposal to extend the definition of controlled premium rate services, to include internet dialler software, irrespective of the call cost or the number on which it is provided<sup>4</sup>. The purpose of this proposal is to enable ICSTIS to take action against rogue internet diallers using numbers outside the 09 number range;
- Ofcom is currently consulting on proposals to update and improve the Ofcom Metering and Billing Approval Scheme<sup>5</sup>, which is aimed at protecting consumers by ensuring the accuracy of the bills they receive from providers; and
- Ofcom will be consulting shortly on options for improving the processes involved in migrating between different providers of telecommunications services, with a view to ensuring that consumers do not face inefficient or unnecessary migration costs.

1.21 Looking ahead, Ofcom believes that the aim should be to establish a consumer protection regime based on four key elements:

- Well-designed rights and regulations – that will give consumers an appropriate level of protection without imposing an undue burden on suppliers;
- access to information about rights and risks – consumers should have ready access to information about their rights and about the risks they face e.g. from a new type of scam, so that they can take action to protect their own interests;
- effective complaints handling processes, operated by providers and others, and including provisions for awarding redress – consumers should have confidence that if a problem does arise, it will be properly dealt with, and that they can secure redress where appropriate; and
- active monitoring and enforcement – to ensure that providers comply with the regulations and that, when they fail to do so, appropriate penalties are imposed.

1.22 Based partly on a number of case studies Ofcom has reviewed the existing framework against the consumer policy objectives proposed above and its view of the key elements of an effective consumer protection regime. In the light of that review, Ofcom believes that its priorities should be as follows:

- **Raising awareness of consumer rights, and helping consumers to protect themselves against harm:** it is currently difficult for consumers to obtain complete and accurate information about their rights. In addition, there is little early warning of scams. If consumers were made more aware of scams, they would be better placed to protect themselves against the harm that these scams can cause, and this in turn could act as a deterrent to potential rogue traders.
- **Improving the effectiveness of complaints handling procedures:** most telecommunications providers are required to publish a complaints code of practice that has been approved by Ofcom, and to provide access to an alternative

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<sup>3</sup> Number Translation Services: A Way Forward, published on September 28, 2005.

<sup>4</sup> Conditions regulating Premium Rate Services, published on November 21, 2005.

<sup>5</sup> Review of the Ofcom Metering and Billing approval scheme, published on November 24, 2005.

dispute resolution (ADR) service. Ofcom's recent review of the ADR schemes<sup>6</sup> identified several shortcomings in the overall complaints handling process, and made a number of recommendations for improvement. Given the central role of this process in the protection of consumer interests, Ofcom considers that priority should be attached to the implementation of best practice in this area.

- **Targeting regulation more directly at offenders, and lightening the load on compliant service providers:** for example, most communications providers are currently required to develop and comply with codes of practice, approved by Ofcom, which govern their dealings with their customers. There may be some scope for reducing the administrative burden associated with these codes, which can fall more heavily on compliant than on non-compliant firms.
- **Reducing the lead time involved in identifying new problems and taking enforcement action against offenders:** recent experience shows that for a variety of reasons, it can take up to 18 months, or even longer, from the emergence of a new consumer protection problem to the implementation of effective remedies. Ofcom would like to see this lead time significantly reduced.
- **Improving the effectiveness of self and co-regulation:** the case studies on mis-selling and silent calls show the limitations of a self-regulatory approach, when there is insufficient incentive for providers to comply with self-regulation.

1.23 In order to further these priorities, Ofcom proposes:

- *To develop an Early Warning System:* The purpose of this system would be to identify problems at an earlier stage in their development: Ofcom would seek to do this by working with other agencies involved in dealing with complaints, and by sharing information on a regular basis. This system would be used to inform policy initiatives and would feed into the proposed initiative on scam alerts.
- *To include in the Consumer Advice section on Ofcom's website advice on consumer rights, scam alerts and an up to date overview of 'hot topics' from Ofcom's Contact Centre.* The Consumer Advice section on the website will be discussed in more detail under the empowerment proposals (1.26) and in section 5. As well as being available on the Ofcom website, scam alerts will be pushed automatically to recipients through an e-mail update registration system. Ofcom also proposes to revamp its Competition Bulletin to make it more easily readable and useful for journalists, and therefore more accessible to consumers;
- *To implement the recommendations of the recent review of ADR schemes and consider the scope for further improvement in complaints handling procedures:* The recent Ofcom review made a number of specific proposals in respect of the ADR services provided by CISAS and Otelo (the 'Schemes'), and the complaints handling procedures of the providers themselves. In addition, Ofcom will continue to work together with the Schemes, industry and consumer interests on the scope for further enhancing the effectiveness of the overall complaints handling process. To support this initiative, Ofcom will continue to monitor the available research and will undertake further research where appropriate;
- *To undertake a review of self and co-regulation:* The main aim of this review would be to assess the circumstances in which self and co-regulation likely to be effective. It would focus in particular on the incentives for individual suppliers to

<sup>6</sup> See "Alternative Dispute Resolution: Recommendations for best practice", an Ofcom Statement published on December 13, 2005.



comply with self-regulation and the scope for targeting regulation to minimise the burden on compliant firms;

- *To undertake a detailed review of consumer related General Conditions:* This review would consider the extent to which the General Conditions could be targeted more effectively at offenders and the burden on compliant service providers could be reduced. It would also examine the scope for increasing the flexibility of the Conditions, so that there would less need to amend them as new problems emerge; and
- *To develop streamlined processes for the enforcement of consumer regulations:* In Ofcom's view, the standard procedures for the investigation of competition related complaints, which typically take 6 months, are often too slow to for the effective enforcement of regulations designed to protect consumers from harm. With this in mind, Ofcom has recently started to streamline procedures to deal with complaints referred to it by ICSTIS, resulting in a significant reduction in the time it takes Ofcom to investigate referred complaints. It proposes to extend this approach to consumer-related referrals from other self or co-regulatory agencies, such as Otelio and CISAS and to consumer complaints which have come directly to Ofcom.

1.24 Stakeholder views are invited on these proposals.

## Consumer Empowerment

1.25 Ofcom believes that consumer interests can in general best be furthered through the promotion of active and effective competition between service providers. In isolation, however, this may not be enough. Consumers also need to be empowered to get the best possible outcome from their dealings in the market, and to secure the benefits of competition. To this end, consumers need to have the confidence, information and understanding required to enable them to make rational, informed choices.

1.26 Ofcom does not consider it has a primary role in improving information flows between providers and consumers – this is generally best left to the market. We recognise that in some cases, the market may not deliver to consumers the information they want. However where the evidence suggests that this has resulted in consumer harm, or is likely to do so in the future, there may be a case for regulatory intervention. In these cases, Ofcom will first consider the scope for a self-regulatory or co-regulatory initiative, or for an initiative that would involve the provision of information by a third party. In exceptional cases, and in the absence of any other source, Ofcom may provide information about providers or their products and services itself.

1.27 Consistent with this approach, Ofcom will during 2006 continue to develop the Consumer Advice section of its website. This section will provide advice on communications services, protection related issues and signposting to other relevant organisations where appropriate. It will be designed to improve the ease with which consumers can obtain information on different aspects of communications services (where to find price and quality of service information, how to decide between different offers and suppliers) and to enhance consumers' ability to deal with new problems as they arise.

1.28 Views are invited on Ofcom's overall approach on consumer information.

1.29 Where consumers have too little information, or too much information of inconsistent quality, various types of harm or detriment can arise, including the following:

- Consumers may not participate in the market at all, because they have limited awareness of the products and services on offer, or conversely because they are confused by the available information;
- Consumers may pay too much;
- Consumers may buy the wrong product or service; and
- Consumers may be disappointed with the product or service, because it turns out to lack the expected level of quality.

1.30 In order to avoid such harm, empowered consumers need to have:

- awareness of alternative suppliers and services;
- access to comparative information on the features, prices and quality of the available services; and
- awareness of the scope they have to switch suppliers and easy access to information on the processes involved in doing so.

### **Awareness of providers and services**

1.31 Market research suggests that in general, the majority of consumers are aware of alternative providers of communications services. In those areas where knowledge and understanding is lower – notably in relation to fixed line telephone calls – we believe growing competition will lead naturally to an increased awareness of alternative providers. We do not consider there is a strong case for regulatory intervention in this area.

1.32 The research also indicates that consumers are generally aware of new services and technologies, although levels of awareness are in some cases markedly lower amongst older consumers. The Ofcom Consumer Panel is carrying out research in order to gain a better understanding of the awareness levels of older consumers. The results of this research will be externally available in Q2 2006.

### **Access to comparative information**

#### **Price information**

1.33 Ofcom has an obligation under Article 21(2) of the Universal Service Directive to encourage the provision of information to enable end-users, as far as appropriate, to make an independent evaluation of the cost of alternative usage patterns. This provision is reflected in General Condition 10.1 which among other things requires providers to publish clear and up to date information on prices and tariffs.

1.34 Ofcom currently operates the 'Ofcom PASS' accreditation scheme for third party services, which compare the prices of different providers and supply impartial and accurate information. At present, one provider – uSwitch - has secured accreditation for its fixed line price comparisons, which cover around 30 providers. The site also provides information about quality of service indicators such as levels of customer care and the availability of online billing. It accommodates the needs of visually or

hearing impaired consumers and offers a comparison service by phone for those without access to the internet.

- 1.35 Our research shows that personal contacts such as friends and family remain the most popular source of information for those considering a change of supplier. Around a fifth of consumers across markets say they would turn to the internet for trusted information, and we would expect this proportion to rise as internet penetration increases in the future. However, awareness of the PASS scheme amongst residential consumers remains low, standing at 8% in November 2003.
- 1.36 Ofcom recognises that markets have changed significantly since the PASS scheme was introduced and the relevant research was carried out. We therefore consider it timely to conduct a full review of the PASS scheme. As part of this review Ofcom would undertake further research into consumers' usage and knowledge of price comparison services.
- 1.37 Our research also shows that while those without Internet access – frequently older and low income consumers - are less likely to look for information at all, providing price information solely via websites will risk excluding relatively large – and vulnerable groups of consumers.
- 1.38 In the light of these developments, Ofcom has identified four possible options for the PASS scheme, on which stakeholders are invited to express their views:
- Option 1 - Withdrawal of the PASS scheme: Consideration could be given to withdrawal of the scheme on the grounds that it is either (i) ineffective, as evidenced by the low level of consumer awareness, or (ii) no longer necessary, because of the growth in the number of unaccredited sources of comparative price information.
  - Option 2 – Maintain the scheme as it stands: Under the status quo option, the number of accredited information providers might grow over time, but the strict criteria required for accreditation would be retained.
  - Option 3 – Retain, review and re-launch the scheme: Under this option, Ofcom would review and re-launch the PASS scheme with a view to raising consumer awareness of the scheme and improving its overall effectiveness. This would provide an opportunity to re-evaluate the content of the PASS Code, three years after its inception, to ensure the standards required for accreditation reflect developments in the marketplace (for example, the increase in mobile and fixed service providers) and to encourage extension of the scheme to other communications services (for example broadband and mobile).
  - Option 4 – Establish closer links with a single price comparison provider: Under this option, Ofcom would establish closer links with a single price comparison provider, for example by providing information on or via the Ofcom website but outsourcing the work to a third party. This would provide a greater opportunity for Ofcom to concentrate its efforts on promoting a single source of information, with the potential for this to include mobile, fixed, broadband, and digital television comparisons. However, it would be necessary to address accessibility for those consumers without internet access who are less likely to look for information. This would be a relatively costly solution for Ofcom to pursue without the commercial revenue models used by some existing price comparison services. There may

also be competition concerns about the way the third party provider is chosen and funded by Ofcom.

- 1.39 Whichever of the above options is selected, Ofcom could also consider commissioning an independent annual report setting out comparative price information, and aimed at those consumers who are considering a change of provider.

### **Quality of Service**

- 1.40 Ofcom's research (the details of which are included in Annexes 5 and 6) shows that there is stated demand from both residential consumers and SMEs for quality of service (QoS) information. Service quality is consistently mentioned by consumers as the second most important driver of switching, after price. Evidence from the Ofcom Contact Centre shows that a significant number of consumers complain about the service levels they receive from their providers. And we anticipate that quality of service will be a significant issue in the transition to next generation networks. It will therefore be important that this area is carefully monitored.
- 1.41 In line with our regulatory principles, Ofcom has encouraged the market to provide information on QoS indicators through an industry-led approach in which network operators and service providers define and manage the scheme and collectively publish indicators for use by consumers. Our aim is to ensure that information supplied to consumers is objective, reliable, timely and up-to-date.
- 1.42 We are currently pursuing two QoS initiatives – fixed voice and mobile voice. Ofcom has issued a Direction requiring certain fixed voice service providers to publish objective and comparable QoS indicators. The mobile providers, although not directed to do so, have agreed to self-provide independent, comparable quality of service information. Both the fixed and mobile initiatives are wholly financed by industry with Ofcom acting as a facilitator.
- 1.43 The first results of both the fixed and mobile QoS information are scheduled for publication in July 2006. User testing on the accessibility and user-friendliness of the two websites will be an integral part of the development of this service. Both sites will have a user feedback facility.
- 1.44 In order to provide the maximum benefit to consumers, the QoS information needs to keep pace with changing technological developments. Ofcom intends to undertake reviews of both schemes by the end of 2006, following publication of the first set of results. The reviews will be based on end-user feedback (including the usefulness of the chosen indicators), levels of use (segmented by consumer group where possible) and levels of participation in the scheme. In the case of fixed providers, this may include enforcement action where service providers covered by the Direction are not participating and are therefore in breach.

### **Awareness of switching processes**

- 1.45 Empowered consumers also need to be aware of the scope they have to switch providers, and to have easy access to information on the processes involved in doing so.
- 1.46 Research indicates that switching activity in telecoms is primarily driven by a minority of technology-orientated consumers. Most consumers - between 60%-70%

depending on the market, have never tried to calculate the potential savings from switching, have not switched and are happy with their fixed rental and calls provider. This proportion is slightly lower for broadband (50%) and mobile (45%). These consumers can be characterised as happy but 'uninvolved'.

- 1.47 One reason why such a large proportion of consumers are 'uninvolved' may be the perceived level of savings available. Research findings suggest that the level of perceived savings is generally lower than the amounts that would make consumers switch. There is also increased uncertainty amongst non-switchers regarding how easy the process would be. Ofcom is currently conducting research which is aimed at providing a better understanding of consumer behaviour in relation to purchasing decisions, and the reasons behind the lack of consumer involvement.
- 1.48 A minority of consumers – between 11% and 15% depending on the market – said they had not switched because they were prevented from doing so. A proportion of this group said this was for reasons that might be addressed through the provision of additional information e.g. because they don't know where to find information. However, these consumers tend not to be members of 'vulnerable' groups. Instead, they are generally younger, of social grade B and more likely to be male and living in single person households. Ofcom does not consider that an initiative targeted at this consumer group would be warranted as these categories of consumer tend to have relatively good access to information, for example through the internet.

#### **Further research on uninvolved consumers and decision making behaviour**

- 1.49 Ofcom continues to have concerns over the position of uninvolved consumers who do not express dissatisfaction with their situation but who nevertheless may be disadvantaged in terms of their ability to participate in the market. As discussed in the Telecoms Review Statement, uninvolved consumers tend to be:
- older – aged 65 and above;
  - on lower incomes; and
  - less likely to have internet access at home.
- 1.50 These consumers also tend to have a lower than average understanding of new technology terms, a lower than average awareness of alternative suppliers and limited knowledge of their consumer rights.
- 1.51 Whilst these consumers are an obvious target for an initiative designed to raise awareness, research findings indicate a high risk of such an initiative being unsuccessful. This group mainly keeps informed through friends and family and, given that these consumers describe themselves as 'happy' with their existing providers, the supply of additional information might have little effect.
- 1.52 As mentioned above, in order to gain more insight into the decision making process of different consumer groups when buying communications services and switching supplier, Ofcom proposes to carry out further research, including both 'uninvolved' consumers and those that have switched or are in the process of switching supplier. This will be conducted in close cooperation with the Ofcom Consumer Panel.

## Section 2

# Introduction

- 2.1 Under section 3(1) of the Communications Act 2003 (the 'Act'), it is Ofcom's principal duty, in carrying out its 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.'
- 2.2 The purpose of this document is to:
- set out Ofcom's approach to the promotion of consumer interests; and
  - elicit stakeholder views on a number of issues and options related to consumer policy.
- 2.3 This document, amongst other things, outlines the policy Ofcom will follow when exercising its discretion in imposing obligations and carrying out or targeting enforcement action. Ofcom will apply its consumer policy in a way which is consistent with its duties and powers under the Communications Act and the relevant EU Directives.
- 2.4 This Consultation also addresses a number of issues arising from the Telecoms Strategic Review (TSR), related to consumer information and switching, and puts forward proposals for future regulatory action.
- 2.5 Overall, this Consultation aims to identify the objectives and priorities that should drive Ofcom's consumer policy over the next two to three years.

## Scope of the project

- 2.6 The primary focus of this Consultation is on:
- the relationship between competition policy and consumer interests;
  - consumer protection; and
  - consumer empowerment.

Our interpretation of these terms is explained in section 3.

- 2.7 The Consultation does not address matters related to:
- the regulation of content;
  - operational aspects of spectrum management e.g. licensing and interference monitoring;
  - Digital Switchover;

- Universal Service Obligations;
- Media literacy; and
- other "citizen interests".

2.8 These issues are being addressed in other projects being undertaken by Ofcom. Our interpretation of the distinction between consumer and citizen interests is discussed in section 3.

## Market Research

2.9 All our findings are underpinned by market research carried out by Ofcom and the Ofcom Consumer Panel. Additional specific research relating to consumer searching and switching behaviour in this document has been carried out for the ESRC Centre for Competition Policy (CPP) at the University of East Anglia by MORI. However, Ofcom has conducted its own analysis of the data and takes responsibility for the analysis and interpretation. Full details of all of the market research referred to in this consultation can be found in Annexes 5 and 6.

2.10 Ofcom is currently working on three key initiatives due to be published during 2006 which will provide further insight into the behaviour and attitudes of consumers across the UK. These are summarised below:

- **Digital Consumer** – will build an over-arching picture of consumers' different attitudes and behaviours across and within TV, radio, the internet and portable devices.
- **Audit of Media Literacy** – will assess consumers' access to, understanding of, and creativity with the key media platforms - TV, radio, internet, mobile. Its aim is to identify the key types of media literacy that exist, and ascertain the extent to which people are interested in developing their media literacy further and the impact of literacy on behaviour and take-up of communications
- **Audit of Nations and Regions** – will identify whether there are national or regional differences in availability, take-up and exclusion in the communications sector across the UK and if so, what is driving these.

2.11 In addition to these three initiatives, Ofcom has started a research project which will provide further insight specifically into the decision-making processes of different consumer groups in the communications sector.

2.12 This research will be carried out in consultation with Ofcom's Consumer Panel and will assess:

- consumers' use of information sources and preferences, alongside their switching behaviour, to identify whether and how consumers use these when making choices;
- consumer opinion on current information offerings being used, e.g. use of intermediaries, supplier websites, internet generally, specialist publications;
- the importance of savings to consumers in switching supplier, what trade-offs are made when considering whether to switch, and what are the key drivers in consumers' decisions on whether to search or switch;

- whether mis-perceptions or low awareness of achievable savings or the ease of the switching process impacts consumers' switching decisions; and
- what, if anything, would encourage 'uninvolved' groups to participate in telecoms markets.

2.13 Reference to this research is made in section 5.

### **Links to other projects**

2.14 As noted above, this Consultation addresses a number of issues related to consumer information and switching which were considered in the TSR.

2.15 A number of the issues covered in this Consultation are the subject of other Ofcom projects. These projects include:

- Mis-selling, switching and migrations project;
- The informed consumer project;
- The NTS policy project;
- Quality of service indicators project for fixed and mobile operators; and
- Metering and billing project.



## Section 3

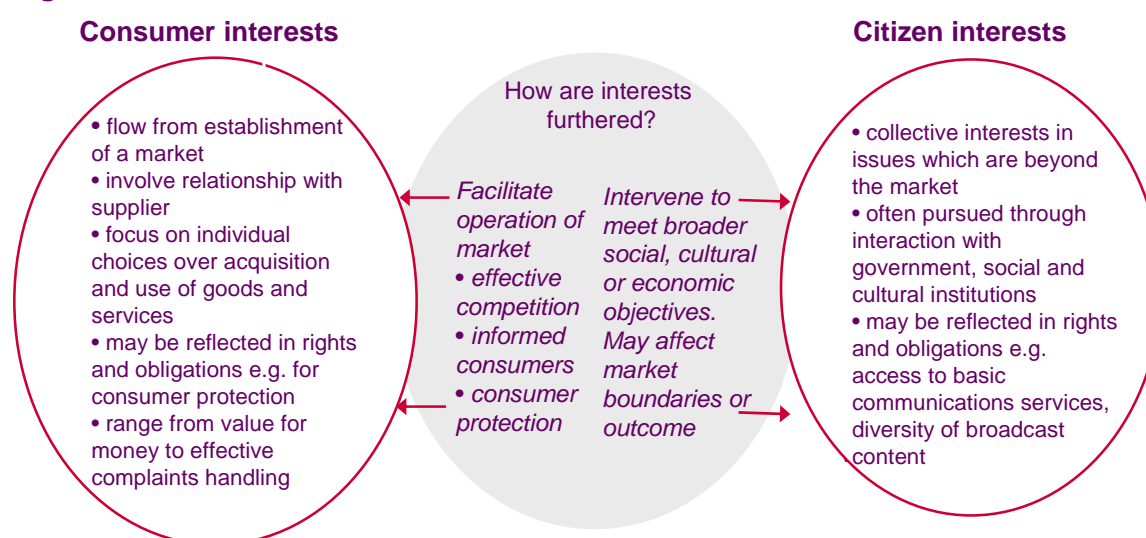
# Overview of Ofcom's Approach

## Consumer and citizen interests

- 3.1 As noted above, the Communications Act requires Ofcom, in carrying out its functions:
- to further the interests of citizens in relation to communications markets; and
  - to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 3.2 Ofcom recognises that for most individuals, most of the time, the distinction between citizen and consumer interests is unlikely to have much practical significance. In developing a policy framework, however, it is important to distinguish between the two concepts. A distinction is also required so that Ofcom can fulfil its obligation under sections 3(6)-3(8) of the Act to identify cases in which consumer and citizen interests conflict with each other.
- 3.3 In Ofcom's view, consumer interests and citizen interests are closely related, as each of us has a role as both a consumer and a citizen. However, a distinction can be drawn, based on relevant legal provisions.
- 3.4 Although the Communications Act does not define citizen interests and consumer interests, section 129 of the Enterprise Act 2002 defines a "consumer" as a person:
- to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
  - to whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them; and
  - who does not receive or seek to receive the goods or services in the course of a business carried on by him.
- 3.5 In addition, Section 3(5) of the Communications Act requires Ofcom to have regard, in particular, to the interests of consumers in respect of "choice, price, quality of service and value for money".
- 3.6 As these provisions suggest, "consumer interests" arise following the establishment of a market, in which individual consumers make decisions about the acquisition and/or use of goods and services, which are provided by suppliers. The establishment of a market creates options for consumers, about whether to purchase or use particular goods and services, and if so in what quantity or with what frequency. The relationship between consumer and supplier is typically a direct commercial one, but may not be. For example, the relationship between a consumer and a supplier of premium rate services is indirect, with revenues typically being channelled through several intermediaries to the service provider

- 3.7 As market participants, consumers have an interest in a range of things, including access to a wide range of goods and services, a choice of supplier, price, quality of service and value for money. All of these elements are referred to in sections 3(2) and 3(5) of the Act.
- 3.8 In addition, consumers have an interest in having access to information about the goods and services on offer in the market, so that they can make informed, rational consumption decisions. Finally, they have an interest in being protected against unfair practices perpetrated by suppliers. In this context, consumer interests may give rise to rights and obligations, based on statutory arrangements or self-regulation. Consumers may, for example, have a right not to be subject to unfair contract terms.
- 3.9 As citizens, on the other hand, we have a shared, collective interest in a range of issues which are 'beyond the market', but which also have a major influence on our lives. To give an obvious example, we have a shared interest as citizens in the success of efforts to tackle global warming. Within the communications sector, examples include our interest in the universal availability of basic communications services, in media literacy, and in access to a diversity of opinion about news and current affairs. We have a collective interest as citizens in these things, which are reflected in the provisions of the Act.

**Figure 1: The distinction between citizen and consumer interests**



- 3.10 Although this distinction between consumer and citizen interests (illustrated in Figure 1) can be clearly drawn at a conceptual level, the relationship between the two categories of interest is in practice more complex. Some observations and examples can help to clarify the relationship.
- 3.11 Firstly, it is evident that citizen and consumer interests may at times be in conflict with one another. For example, our interest as consumers in automobiles may conflict with our interest as citizens in efforts to combat global warming. Conflicts may also arise in the communications sector. This possibility is anticipated in s. 3(8) of the Act, which requires Ofcom, where it resolves a conflict in an important case, to publish a statement setting out the nature of the conflict, the manner in which it has been resolved and the reasons for the decision to be resolved in that manner.
- 3.12 Second, citizen interests can affect consumer interests by shaping the boundaries of the market, or the rules under which markets operate. As an example of this, government might replace a publicly administered system of health care provision

with a market for health care services, in which individuals can exercise choice over their consumption decisions. The decision to set up such a market could be driven by a belief that it would be in the collective interest of all members of society i.e. it would be in our interests as citizens. But the establishment of such a market would lead to the creation of a new set of consumer interests.

3.13 Two examples from the communications sector are as follows:

- Local programming: Under the Communications Act, Ofcom sets rules requiring that a certain proportion of TV and radio programmes are locally produced. These requirements are designed to serve our interests as citizens in local programming. This intervention does, however, change the boundaries of the market, in the sense that it creates market opportunities for programme makers in parts of the country where they might not otherwise exist. In addition, it gives us an interest as consumers in local programming that might not otherwise have arisen.
- Universal Service Obligations (USO): Under the Universal Services Directive and the Communications Act, Ofcom regulates USO provisions designed to ensure affordable access to basic telecommunications services throughout the UK. Whilst these regulations are designed to further our interests as citizens, they can also affect the consumer interest by changing the boundaries of the market, and supplier behaviour within it. They could affect the market, for example, by requiring the designated USO supplier to provide service to a part of the country which might not otherwise be served, or to offer services to low income households on terms that might not otherwise be affordable. Those of us affected by these policies have a direct interest as consumers in their impact on the operation of the market.

3.14 This distinction between citizen and consumer interests can be used as a basis for drawing a distinction between citizen and consumer-related regulatory policies. In Ofcom's view, the distinction can usefully be drawn as follows:

- Consumer policy is concerned with ensuring that markets operate in a manner which most effectively serves consumer interests. The purpose of consumer policy is to facilitate the operation of markets, to remove barriers and correct market failures which might otherwise prevent them delivering what consumers want;
- Citizen-related policy is concerned with changing the outcome delivered by the market in order to meet a broader social, cultural or economic objective or interest.

*Question 1: Do you agree with the proposed distinction between citizen and consumer interests?*

## Elements of consumer policy

3.15 A central premise of Ofcom's approach to consumer policy is that consumer interests can in general best be served by promoting effective competition in the provision of communications services. And as noted above, Ofcom is required by the Act to further the interests of consumers "where appropriate by promoting competition".

3.16 Where the scope for competition is limited, and a supplier has Significant Market Power (SMP), ex ante regulation may be required to ensure that the SMP supplier is

not able to abuse its dominance, to exploit consumers or gain an unfair advantage over its rivals.

- 3.17 In this context, consumer policy and competition policy can be seen as complementary to one another: competition policy is concerned with the promotion and protection of competition per se, on the basis that competition is generally the most effective way of furthering consumer interests. Consumer policy is concerned with ensuring, amongst other things, that in developing competition policy, sufficient account is taken of the specific interests of consumers in the markets concerned. Consumer policy can therefore be seen as having an oversight role, aimed at ensuring that competition policy effectively serves the ultimate objective of furthering the interests of consumers.
- 3.18 However, effective competition policy by itself is not enough to ensure that consumer interests will be fully served. Consumers also need to be empowered to maximise the benefits they derive from competitive markets. To do so, they need to have the information, skills and confidence needed to make informed choices between competing services. They also need to be protected against rogue traders and products and services that could cause harm, whether financial, physical or psychological in nature.
- 3.19 Consumer policy therefore has three broad objectives:
- integration with competition policy: ensuring that competition policy takes sufficient account of consumer interests and behaviour;
  - consumer protection: protecting consumers against various kinds of harm; and
  - consumer empowerment: equipping consumers to obtain the best deal they can.
- 3.20 The relationship between competition policy, consumer protection and consumer empowerment is a complex one, as they may be mutually reinforcing in some cases but not in others. Consumer empowerment will tend to boost competition, as noted in a 1999 Government White Paper and a recent report by the Department of Trade and Industry and HM Treasury<sup>7</sup>:
- “well-informed consumers help markets to work effectively. Customers who can assert their needs clearly and make the best choices spur business to become more competitive and raise productivity. Consumers benefit from this through lower prices, increased choice and more innovative products.”*
- 3.21 On the other hand, the more competition there is in a market, the greater may be the scope for consumer harm, for example, from rogue traders, able to enter and exit the market quickly. This has been a contributory factor, for example, to recent problems in the market for premium rate services.
- 3.22 Consumer empowerment and consumer protection tend to be mutually reinforcing, in that well-informed consumers will be more able to protect themselves against

<sup>7</sup> See 'Consumer representation in regulated industries, a report by the Department of Trade and Industry and HM Treasury', July 2004, page 35, and 'Modern markets; Confident consumers', <http://www.dti.gov.uk/consumer/whitepaper/overview.htm>

potential harm and an effective consumer protection regime will promote the confidence required for consumers to obtain the best deal from the market.

- 3.23 In order to achieve the objectives of consumer policy, it is also essential that consumer interests are adequately represented in policy-making processes.

### **Integration with Competition Policy**

- 3.24 Given the importance of competition policy in promoting consumer interests, it is essential that sufficient account is taken of those interests in developing competition policy. This can be achieved in three ways:

- by ensuring that sufficient evidence is available on the nature of consumer interests and behaviour in the markets concerned;
- by developing processes designed to ensure that the evidence is taken into account in an appropriate way; and
- by monitoring the impact of competition policy on the things that matter to consumers, such as price levels, service quality and having a choice of suppliers.

- 3.25 On the first of these points, Ofcom's primary sources of evidence include:

- Market research: Ofcom has a significant market research budget which is used to carry out an extensive programme of quantitative and qualitative market research, including regular research activities and ad hoc studies to support particular policy projects. For example, the thinking behind Ofcom's Strategic Review of Telecommunications was shaped by research results which indicated that many consumers attach more importance to innovation than they do to price. As result, more weight was given to the need to promote dynamic competition between suppliers in the provision of new services, as opposed to static competition between established providers.
- Ofcom Contact Centre (OCC) statistics: The OCC performs a key role in handling consumer enquiries and complaints, and produces statistics which can be extremely helpful, for example in identifying consumer protection problems before they are likely to require policy work or enforcement action.
- Consultation responses: Responses to consultation documents from individual consumers and from consumer organisations also provide a valuable source of evidence on consumer interests.

- 3.26 Looking ahead Ofcom believes that there is scope to improve the level of coordination and communication between Ofcom and consumer organisations such as Consumer Direct, the National Consumer Council (NCC) and Which? through regular meetings and the open exchange of information.

- 3.27 On the second point, the Ofcom Consumer Panel (OCP) has recently published a report on processes and procedures which can be used by regulatory bodies to ensure that evidence on consumer interests is taken into account in an appropriate way when developing and implementing regulatory policy. One of the proposals would involve the use of an audit toolkit to help ensure that sufficient weight is given to the consumer interest. Ofcom is currently considering the OCP proposals and it is likely that this will lead on to implementation work, to put in place auditable processes for ensuring that consumer interests are given sufficient priority.

- 3.28 In relation to the third point, monitoring the impact of competition policy on the things that matter to consumers Ofcom considers that it would be appropriate to define a range of indicators which can be used in monitoring market developments, in order to gauge whether consumer interests are being met. We return to this point in this section under 'Monitoring consumer interests' (3.62).

## Consumer Protection

- 3.29 In Ofcom's view, an effective consumer protection regime should have four key elements:
- the rights of consumers and obligations of suppliers should be clearly defined and simple enough to be readily understood;
  - information and advice should be readily available to consumers, both on their rights and on consumer protection issues which might affect them;
  - an effective process must be in place for handling consumer complaints, and providing redress where appropriate; and
  - regulations governing supplier behaviour should be actively monitored and effectively enforced.
- 3.30 There are many agencies involved in consumer protection and to understand Ofcom's role it is necessary to consider the overall framework within which it operates. This framework is examined in section 4.

## Consumer Empowerment

- 3.31 Consumer empowerment is concerned with giving consumers the skills, information and confidence they need to get the best deal they can from the market. They need to be equipped to shop around to obtain the best deal, they need to know where to go to obtain comparative information on the available services and the firms which supply them, and they need the confidence required to switch between suppliers where it is in their interests to do so.
- 3.32 To a significant extent, it may be possible to rely on the market to provide consumers with the information and advice they need. But the evidence for the communication sector shows that this is not always the case. In some cases, the market does not provide consumers with what they need to maximise the benefits they can extract from an increasingly competitive market. In these cases, Ofcom has a duty to intervene.
- 3.33 Intervention need not mean that Ofcom provides the required information and advice itself. It could, for example, involve a requirement on suppliers to provide more information to their customers, or initiatives designed to promote the provision of information by third parties.

## Related policy areas

- 3.34 There are a number of policy activities which do not fall within the boundaries of consumer policy as described above, but which nevertheless have important implications for consumer policy. These include the following:

- *Universal Service Obligations (USO)*: The aim of USO policy is to ensure that certain services are available on an affordable basis to individuals throughout the United Kingdom. USO policy is designed to alter the outcome delivered by the market in order to serve a broader social objective, and is therefore aimed primarily at furthering citizen interests. Notwithstanding this point, those who benefit from USOs, because they receive services that would not otherwise be available or that they could not otherwise afford, benefit as consumers. A policy designed to further citizen interests thus creates an additional set of set of consumer interests, which must then be taken into account when developing consumer policy.
- *Media literacy*: The aim of Ofcom's media literacy programme is to make us better equipped to deal with modern technology and better able to manage the information we receive from electronic communications channels, most notably the internet. Ofcom has an obligation under the Communications Act to carry out this programme, and does so using funds which are specifically earmarked for the purpose. In Ofcom's view, this programme is primarily a citizen-related initiative, because its ultimate purpose is to promote social cohesion. The objective is nevertheless achieved, at least partly, by equipping consumers to manage the information they receive more effectively. In other words, the broader citizen-related objective is achieved partly by promoting consumer empowerment. The relationship between citizen and consumer interests is again a very close one.
- *Digital Switchover (DSO)*: Ofcom's obligations in relation to DSO stem most directly from its role in providing policy advice to the Government, and in managing the DSO programme on the Government's behalf. From this perspective, Ofcom's DSO activity can be seen as a citizen-related initiative, as the Government has determined that DSO is in the collective interest of all UK citizens. Once again, though, it is a citizen-related initiative that will have far-reaching consequences for us as consumers. DSO implementation will, for example, give rise to a demand for consumer information, and Ofcom will have a role in considering how that demand should be met. It could also give rise to consumer protection problems that will again have to be addressed by Ofcom as part of its work on consumer protection.

3.35 As these examples show, policies aimed primarily at furthering citizen interests can often have significant implications for consumer policy.

## Vulnerable consumers

3.36 The Act and the Universal Service Directive<sup>8</sup> require Ofcom, in performing its duties, to have regard to a range of factors, including several relating to vulnerable consumers or others groups who may be disadvantaged. Amongst other things, Ofcom is required to take account of:

- the vulnerability of children and others whose circumstances appear to Ofcom to put them in need of special protection;
- the needs of persons with disabilities, of older people and of those on low incomes; and

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<sup>8</sup> Directive 2002/22/EC, 7 March 2002



- the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.

- 3.37 In line with these obligations, Ofcom considers that when formulating regulatory policy it is appropriate to take particular account of the interests of groups of consumers who are especially vulnerable to harm. These groups may include children, older people, people with disabilities and those on low incomes. They may also include other groups who, based on the available evidence, are systematically more vulnerable to harmful supplier behaviour than consumers in general.
- 3.38 Some vulnerable groups may also be at a disadvantage when it comes to issues related to consumer empowerment. For example, if older consumers are unable to get the best deal because they do not have access to the internet, and cannot easily shop around between suppliers, it may be possible to solve the problem through a consumer policy initiative aimed at providing them with better information. In these circumstances, Ofcom believes that it would be appropriate to have particular regard to the interests of consumer groups such as older people, where the evidence shows that they tend to be disadvantaged in a systematic way. In other words, it may be appropriate to give additional weight in these circumstances to the interests of the vulnerable than to the interests of other consumers.

*Question 2: Do you agree with Ofcom's position on vulnerable consumers?*

## The Institutional Framework

- 3.39 The Communications Act establishes a framework for consumer representation in the communications sector which differs to some degree from the framework applied in other regulated sectors of the UK economy. This is illustrated in Figure 2.

**Figure 2: Consumer Representation**

	<b>Telecoms and broadcasting transmission</b>	<b>Broadcast content</b>	<b>Energy</b>	<b>Water</b>	<b>Posts</b>	<b>Financial Services</b>
Enquiries/info requests	Ofcom	Ofcom	energywatch	WaterVoice	Postwatch	FSA Consumer Helpline
Resolving complex complaints	ADR schemes	Ofcom	energywatch	WaterVoice	Postwatch	Financial Ombudsman Service
Educating consumers	Ofcom	Ofcom	energywatch	WaterVoice	Postwatch	FSA
Research	Consumer Panel / Ofcom	Ofcom	energywatch	WaterVoice	Postwatch	FSA
Policy influencing and advocacy	Consumer Panel	Content Board	energywatch	WaterVoice	Postwatch	FS Consumer Panel

- 3.40 In the energy, water and postal sectors, statutory bodies have been set up to represent consumer interests, which operate alongside the sectoral regulators, and cover a wide range of functions, from handling consumer enquiries to resolving complex consumer complaints.
- 3.41 In the financial services and communications sectors, consumer panels have been established with a far more limited remit, focusing on the provision of policy advice and the advocacy of consumer interests. As a result, the sectoral regulators, the Financial Services Authority (FSA) and Ofcom have a greater responsibility for the



provision of advice and information to consumers. In telecoms and financial services, it has also meant that complex complaints are dealt with through ADR schemes, although Ofcom and the FSA have a responsibility for ensuring that these operate effectively.

3.42 According to a recent Government report<sup>9</sup> the rationale for the different industry models is linked to:

- the degree of monopoly power;
- the degree to which the industry is involved in the provision of an essential service; and
- the extent of information problems in the market.

3.43 The energy, water and postal sectors have consumer bodies with broader remits because the markets they serve tend to be more monopolistic, and/or the services they provide are more “essential”, than communications.

### **The Ofcom Consumer Panel**

3.44 The Ofcom Consumer Panel (OCP) has adopted a strategic approach, focusing on priority issues selected on the basis of:

- relevance;
- detriment;
- practicality; and
- vulnerable groups.

3.45 The Panel operates on the basis of research-based evidence, rather than relying, for example, on consumer complaints. To this end, it commissions an annual consumer survey, managed by Ofcom, on matters related to the consumer interest.

3.46 The OCP's strategic approach was endorsed by the Government in its July 2004 report on consumer representation in regulated industries<sup>10</sup>.

3.47 In addition to consumer issues, the OCP's remit also includes citizen issues not related to content. As a result, the Panel takes a keen interest in issues such as universal service, which revolve around ‘who you are and where you live’.

### **Plans for a new consumer body**

3.48 The Government has recently announced plans to strengthen consumer representation by bringing together a range of consumer bodies, possibly including the Ofcom Consumer Panel, to form a new body, to be known as “Consumer Voice”. A consultation document setting out these proposals was published by the Department of Trade and Industry on 25 January 2006.

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<sup>9</sup> See ‘Consumer representation in regulated industries, a report by the Department of Trade and Industry and HM Treasury, July 2004, page 11.

<sup>10</sup> op cit, page 19

## Ofcom's Role and Remit

3.49 As noted above, the main objectives of consumer policy are:

- integration with competition policy: ensuring that competition policy takes sufficient account of consumer interests and behaviour;
- consumer empowerment: equipping consumers to obtain the best deal they can; and
- consumer protection: protecting consumers against various kinds of harm.

3.50 Under the terms of the Communications Act, Ofcom has an important role to play in meeting each of these objectives. As the body responsible for competition policy in the communications sector, one of Ofcom's primary roles is to ensure that policies designed to promote competition, or mimic its effects, serve the interests of consumers while at the same time having due regard to other citizen interests.

3.51 With regard to consumer empowerment, Ofcom has broad discretionary powers under the Act to publish information and advice which it considers appropriate. It also has a number of specific duties under the Act and the EU electronic communications directives e.g. to promote media literacy and to provide an advisory service on radio interference.

3.52 Ofcom also has a number of specific powers and duties related to consumer protection, including powers to set General Conditions for the protection of end-users and to enforce directions issued in accordance with an approved Premium Rate Services (PRS) Code, and duties to prosecute providers of grossly offensive content and those who persistently misuse Electronic Communications Networks (ECN). These powers and duties are set out more fully in section 4 of this document.

3.53 In addition, a number of provisions in the Act have had a clear influence on the way in which Ofcom has approached consumer issues, including:

- s.4, which requires Ofcom to have regard to a number of factors including:
  - the desirability of promoting effective forms of self-regulation;
  - the vulnerability of children and others in need of special protection;
  - the needs of persons with disabilities, older people and those on low incomes;
  - the opinions of consumers and members of the public generally;
  - the different interests of people in different parts of the UK, of different ethnic communities and persons living in urban and rural areas;
- s.6, which requires Ofcom to review its functions with a view to securing that its regulation does not involve the imposition of unnecessary burdens;
- s.7, which requires Ofcom to carry out impact assessments of any proposals it considers important, before they are introduced; and

- s.14-16, which require Ofcom to arrange for, publish and take account of research into consumer interests, and to consult with consumers and the Consumer Panel.
- 3.54 Several of these provisions are echoed in Ofcom's regulatory principles, which include commitments to operate with a bias against regulatory intervention and to be evidence-based, proportionate, transparent and accountable.
- 3.55 Finally, the Act requires Ofcom to provide some services directly to consumers, most notably the provision of wireless telegraphy licenses. Ofcom's consumer policy is also relevant to the way in which these services are provided.

### Consumer Policy Objectives

- 3.56 Whilst Ofcom has undertaken a wide range of activities designed to promote consumer interests, it has not previously set out an overall statement of policy objectives in this area, or an approach for achieving them.
- 3.57 In its recent report on strengthening the consumer policy in the UK<sup>11</sup>, the Department of Trade and Industry (DTI) set out the Government's aim of creating a world-class consumer regime, characterised by the features listed in Figure 3.

**Figure 3: Characteristics of a world-class consumer regime**

<p>Objective is to create a regime where:</p> <ul style="list-style-type: none"><li>• Consumers are equipped with the skills, knowledge, information and confidence to exercise their rights to get a good deal.</li><li>• Strong consumer advocacy exists at the general policy making level and in special cases.</li><li>• Consumers have access to appropriate and convenient sources of advice and redress, including effective alternative dispute resolution (ADR).</li><li>• Consumer rights are proportionate, balanced with responsibilities and clear and simple enough to be well understood.</li><li>• Consumers are able to understand the impacts of their own consumption decisions on our shared environment and social wellbeing.</li><li>• Vulnerable consumers are protected without placing undue restraints on markets overall.</li><li>• Enforcement is fair, consistent, effective and proportionate.</li><li>• Markets are regarded as fair by both consumers and business.</li></ul>
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<sup>11</sup> A Fair Deal for All, June 2005

3.58 Ofcom supports these goals.

3.59 In the context of the communications sector, Ofcom's own objectives need to be defined having regard to the institutional framework within which it operates, its duties under the Communications Act, and its own regulatory principles.

3.60 On this basis, it is proposed that the overall aim of Ofcom's consumer policy should be as follows:

To work together with other organisations and the industry to ensure that consumers benefit from increasingly competitive communications markets, are effectively protected from financial and physical harm, unreasonable annoyance and anxiety, and have the information and tools necessary to make informed choices.

3.61 This overall objective will be achieved when:

- consumer interests are fully and consistently taken into account in the development and evaluation of policy, supported by appropriate evidence on the state of consumer opinion;
- consumers are equipped with the information, skills and confidence needed to obtain a good deal;
- consumers have access to clear advice on their rights, and to effective complaints handling procedures and redress;
- regulatory obligations on suppliers provide an adequate level of consumer protection, without imposing an undue burden;
- compliance monitoring and enforcement are fair, consistent, effective and proportionate; and
- due consideration is given to the needs of vulnerable consumers, to ensure that they are not disadvantaged in the market.

*Question 3: Do you agree with the high level objectives for consumer policy proposed above?*

## Monitoring consumer interests

3.62 Once a set of policy objectives and desired outcomes has been determined, Ofcom intends to monitor progress against those objectives using an appropriate set of indicators. A preliminary list of indicators is shown in Annex 7.

*Question 4: Do you agree that the proposed indicators provide an appropriate basis for monitoring consumer interests? Are there any other indicators which should be used?*

- 3.63 Ofcom does not consider that it would be appropriate to set targets for the specified indicators, as many of the factors which would influence the outcome are beyond Ofcom's control. In particular, many of the indicators will be affected by the general development of the markets concerned.
- 3.64 In Ofcom's view, it would be appropriate to publish an annual report on consumer interests, which monitors progress in terms of the sort of quantitative indicators listed in Annex 6 and other relevant information.
- 3.65 This annual report would be complementary to the monitoring and evaluation activities that Ofcom is undertaking in particular policy areas. For example, Ofcom will shortly be publishing a statement outlining how the outcomes of the Strategic Review of Telecommunications will be monitored. Those arrangements will cover the implementation of the BT Undertakings, and the impact that telecoms regulation is having on the development of the market. The annual report on consumer interests would complement this by focusing on the consumer experience.
- 3.66 Indicators will be included for both the residential and SME consumer markets, and to a lesser extent Ofcom will monitor the large business market. Ofcom will mainly use its existing research (via its communications tracking studies) to measure indicators for residential consumers and SMEs. For the large business market, the Communications Management Association's (CMA) Annual Report will provide some evidence and potentially be supplemented with separate, tailored surveys of the CMA members and Ofcom's Large Business User Panel.
- 3.67 Ofcom proposes to begin preparation of the first such report as soon as the present Consultation has been completed.

*Question 5: Do you agree that Ofcom should publish an annual report on the Consumer Interest?*

## Section 4

# Consumer Protection

## Introduction

- 4.1 In the present context, consumer protection is concerned with the protection of residential and business customers against harm caused either by the use of communications networks and services or by providers of those networks and services.
- 4.2 The remainder of this section considers:
- the types of harm consumers may experience in communications markets, and recent evidence on the scale of the problem;
  - the requirements of effective consumer protection regulation;
  - the structure and operation of the current regulatory framework; and.
  - the scope for improving the effectiveness of existing arrangements, and Ofcom's proposed priorities in this respect .

## Harm in communications markets

- 4.3 Harm in communications markets can take many forms, including financial harm, physical harm or anxiety, annoyance or inconvenience<sup>12</sup>. Every year, many complaints are made to suppliers about problems caused either by the use of communications networks and services, or about the behaviour of the companies involved in their provision. Most complaints are resolved satisfactorily by suppliers, but some are not, and these may require regulatory intervention.
- 4.4 In 2005, the Ofcom Contact Centre (OCC) logged 76,849 cases raised by consumers about non-content matters in communications markets, by telephone, e-mail or letter. The issues most commonly raised (see Figure 4) were:
- *Slamming*, which arises when a new service provider displaces your existing telecoms service without your permission. The harm caused by slamming is typically in the form of disruption experienced by the consumer, who may have to spend a significant amount of time and effort, to get the original service restored.
  - *Being charged for a cancelled service*, where consumers have cancelled their service with a supplier, but continue to receive bills. In this case, there may be a direct financial effect on the consumer.
  - *Problems changing provider*, which concern barriers experienced by consumers when trying to switch from one supplier to another. One example is 'broadband tags' that prevent broadband users from moving their custom to another provider. In these cases, there is direct harm, associated with the time spent in arranging

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<sup>12</sup> Harm caused by content, such as violent, indecent or unfair content is outside the scope of this consultation.

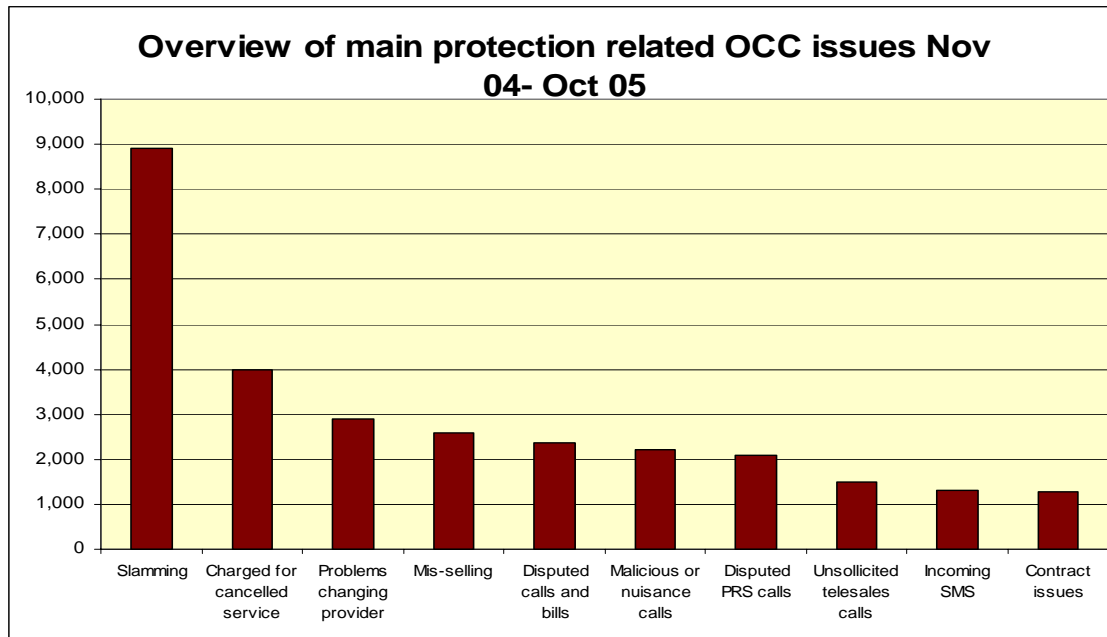
for the tag to be removed, so that the transfer can go ahead. This barrier to switching may also deter some consumers from moving or from using broadband at all.

- *Mis-selling*, where suppliers try to sell a service by, for example, providing false or misleading information and applying unacceptable pressure to change supplier, such as refusing to leave until the customer signs, or using threatening or otherwise intimidating behaviour. Slamming is an extreme form of mis-selling.
- *Nuisance calls*, ranging from an excessive amount of 'wrong numbers' or persistent unsolicited calls causing anxiety, inconvenience or annoyance to malicious calls that are grossly offensive or of an indecent, obscene or menacing character. Both types of calls can lead to harm, especially to vulnerable consumers.
- *Disputed calls and bills*, where consumers deny making specific calls or say they were unaware of the tariff for certain types of calls, for instance calls to Premium Rate numbers. The harm in these cases is generally financial in nature.
- *Unsolicited telesales calls*, mainly generated by companies using call centres to sell products and services to consumers over the telephone. As with nuisance calls, these calls may cause unnecessary inconvenience or annoyance.
- *Incoming SMS messages*, often commercial messages, sent to random mobile phone numbers. Apart from the irritation caused by unwanted messages, consumers may be charged for receiving them.
- *Contract issues*, relating to any unfair contract term such as contract duration, cancellation fees and payment terms. These issues may cause financial harm.

4.5 Over half of the complaints logged with Ofcom are about communications providers. However, a significant proportion of complaints are about providers in other markets who use communications networks to provide or market services. For example, Ofcom has found that a third of complaints about nuisance calls are about calls from debt collectors<sup>13</sup>.

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<sup>13</sup> Ofcom Contact Centre

**Figure 4: Concerns logged with Ofcom between November 2004 and October 2005**

Source: Ofcom Contact Centre

4.6 The data gathered by Ofcom provide only a partial picture of the problems facing consumers because:

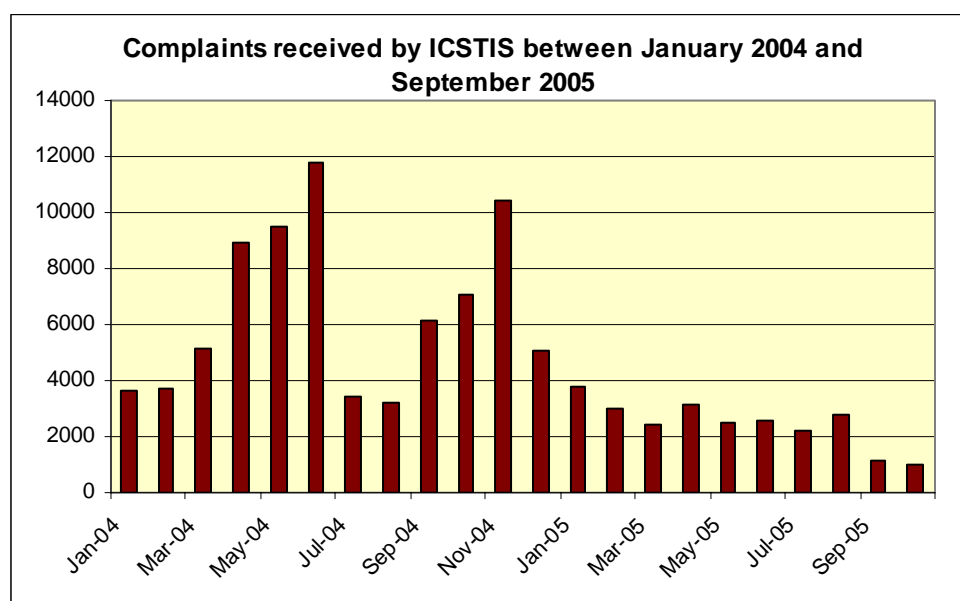
- consumers raise complaints with a variety of organisations who define and log complaints differently; and
- consumers' awareness of complaint processes varies and so many do not report complaints at all.

4.7 Research carried out for Consumer Direct indicates that 78% of consumers who are not happy will make a complaint to their supplier but only around 4% of these consumers who were not happy, escalate a complaint<sup>14</sup>. In telecoms markets, Ofcom found that in 2004 only 0.5% of consumers escalated a complaint to an independent arbiter<sup>15</sup>.

<sup>14</sup> Source: Consumer Direct/ Mori

<sup>15</sup> Ofcom / Continental Research



**Figure 5: Numbers of complaints received by ICSTIS about Premium Rate Services**

Source ICSTIS

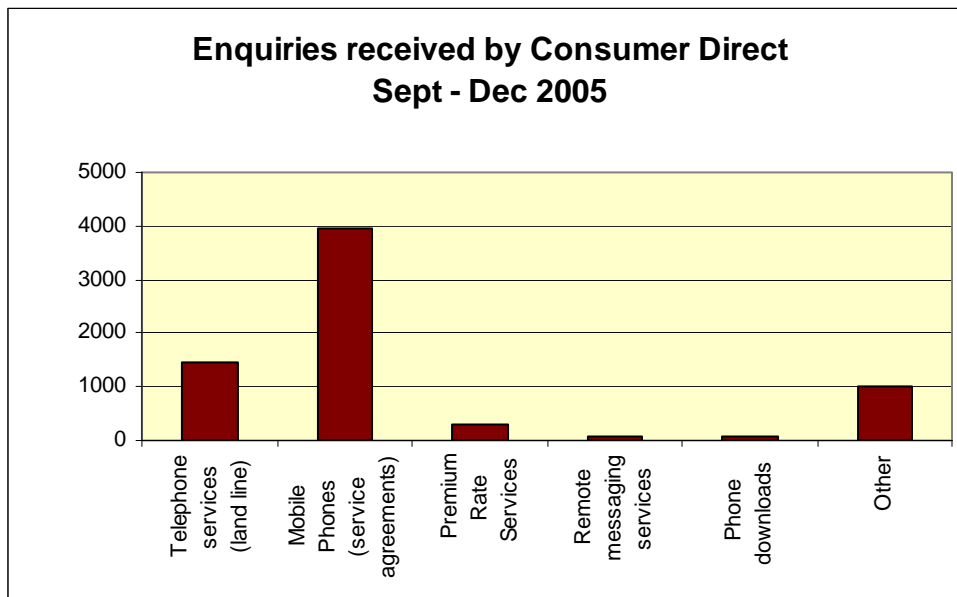
- 4.8 Other important sources of data on consumer protection issues include ICSTIS, ASA, Otelo, CISAS, and Consumer Direct. For example, Consumer Direct has found that more than half the 6,888 calls it received about telecoms services between September and December 2005 were about mobile phone service agreements<sup>16</sup> (see Figure 6). In 2004, Otelo and CISAS received 50,206 and 3,340 enquiries, and both report that the most common complaint, making up over 40%, is about charges or bills<sup>17</sup>. The ASA resolved 2833 complaints about misleading broadcast advertising in 2005.<sup>18</sup>

<sup>16</sup> These figures exclude enquiries about mobile phone handsets

<sup>17</sup> Source: Otelo, CISAS; Ofcom Review of Alternative Dispute Resolution Schemes, July 2005

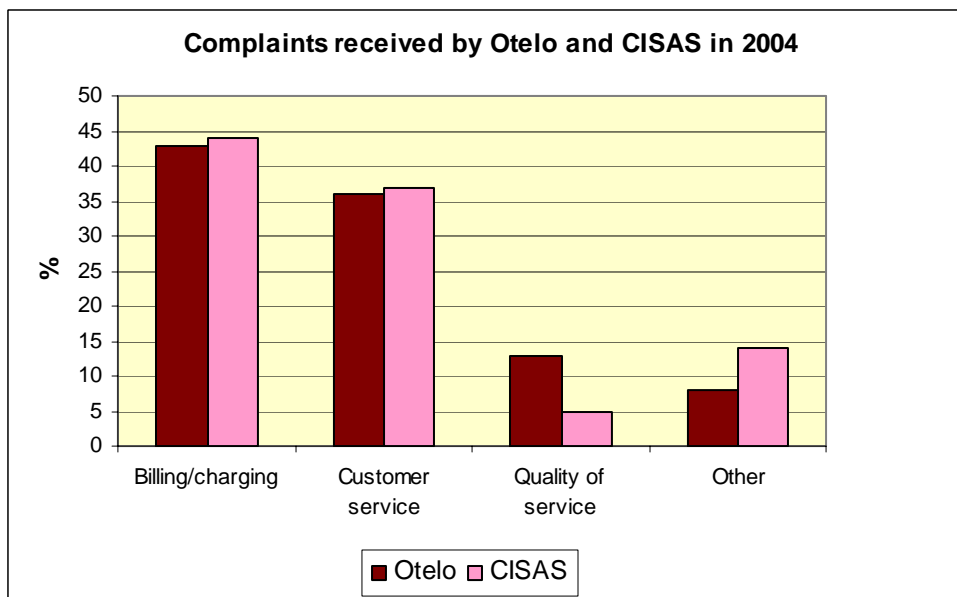
<sup>18</sup> Source: ASA

**Figure 6: Numbers of enquiries received Consumer Direct between September and December 2006 by type**



Source: Consumer Direct

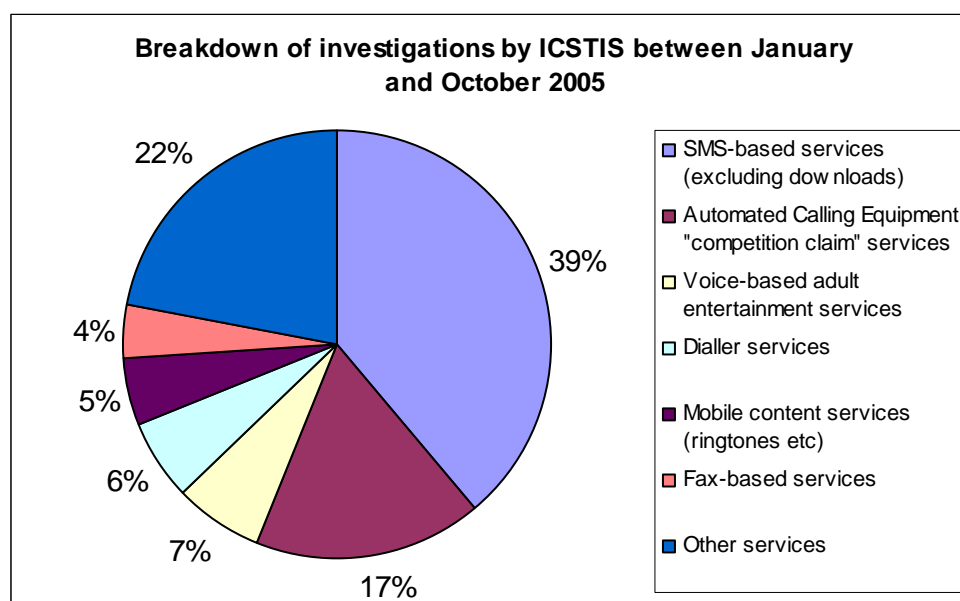
**Figure 7: Percentage of complaints received by Otelo and CISAS in 2004 by type**



Source: Otelo and CISAS

- 4.9 In contrast, the most common issue investigated by ICSTIS between January and October 2005 was SMS services (see Figure 8), although the pattern has varied from month to month as certain types of complaint have tend to occur in waves (waves in complaint numbers are illustrated in Figure 5). ICSTIS handled over 10,000 calls a month at the peak of internet dialler scams in 2004.

**Figure 8: Breakdown of investigations by category**



Source: ICSTIS

4.10 It is clear that the problems experienced by consumers cover a very wide range of issues, and that no single organisation has an overall perspective of potential consumer harm.

4.11 The pattern that emerges has a number of distinguishing features:

- Consumer harm can take a variety of forms. In some cases the harm may be financial e.g. in cases of over-charging, billing for services that have not been provided, or the fraudulent use of internet diallers. In other cases, the harm may take the form of anxiety or annoyance that has been caused unnecessarily or unreasonably. Silent calls, for example, can be a cause of anxiety, especially for older or otherwise vulnerable consumers. In other cases, the harm may arise from the disruption caused by undesirable supplier behaviour. For instance, a consumer who is affected by a case of slamming might experience a service interruption that could take a considerable amount of time and effort to resolve.
- The incidence of harm also varies considerably. At one extreme, rogue internet diallers can cause thousands of pounds of harm to an individual consumer. At the other end of the spectrum, long waiting times on calls to contact centres may not result in significant harm to any one consumer, but aggregated across all consumers, could be seen as a significant source of inconvenience or annoyance.
- The relationship between the consumer and the supplier also varies from case to case. Issues generally fall into one of the following categories:
  - Those between a consumer and a provider of a communications network or service, where there is contractual relationship between the customer and supplier. This category would include issues such as over-billing, or problems with terms and conditions.
  - Those between a consumer and a service provider, where there is no direct contractual relationship but where a service is paid for, partly or wholly

through the telephone bill. Issues related to Premium Rate Services, such as rogue internet diallers, provide the best example here. These problems are inherently more difficult to tackle, because of the absence of direct contractual relationship between the consumer and the supplier responsible for the problem.

- Those between a consumer and a prospective provider of a communications network or service. Problems under this heading might include the misleading advertising of communications services, or unfair selling techniques.
- Those between a consumer and a supplier, who may not be part of the communications sector at all, but nevertheless uses the public communications network to communicate with consumers. Problems that arise in this category are likely to fall outside Ofcom's remit, unless they involve the persistent misuse of the public electronic communications network, or advertising on TV or radio. Some cases involving silent calls, or TV advertising of medicines meet this requirement.
- Consumer issues often emerge in waves, which may be triggered by factors such as technological progress (e.g. rogue diallers) or changing market conditions (e.g. mis-selling of fixed line services). From a regulatory standpoint, this means that it is especially important to be able to identify problems at an early stage in the life-cycle, before the resulting consumer harm becomes too severe.

4.12 Additional information on silent calls, mis-selling and rogue internet diallers is given in the Case Studies in Annex 8.

### **Elements of an effective consumer protection regime**

4.13 In Ofcom's view, an effective consumer protection regime needs to have four key elements:

- well designed regulations governing supplier behaviour – establishing the rights required to give consumers an appropriate level of protection without imposing an undue burden on suppliers;
- access to information about rights and risks – consumers need ready access to information about their rights and about the risks they face e.g. from a new type of scam, so that they can take action to protect their own interests;
- effective complaints handling processes, including provisions for awarding redress – consumers should have confidence that if a problem does arise, it will be properly dealt with, and that they can secure redress where appropriate; and
- active monitoring and enforcement – to ensure that suppliers comply with the regulations and that, when they fail to do so, appropriate penalties are imposed.

4.14 These elements build on Ofcom's regulatory principles to:

- operate with a bias against intervention but with a willingness to intervene firmly, promptly and effectively where required;
- strive to ensure interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome; and

- always seek the least intrusive regulatory mechanisms to achieve policy objectives.

*Question 6: Do you agree with the characteristics identified of effective consumer protection?*

## **The existing consumer protection framework**

- 4.15 The existing framework for consumer protection in the communications market is based on a reasonably complex set of regulations governing supplier behaviour. In some cases, the regulations are prohibitive in nature, in that they are designed to prevent suppliers behaving in ways that could cause harm. For example, it is an offence for suppliers to engage in misleading advertising, or to cause unnecessary anxiety, annoyance or inconvenience through persistent misuse of a communications network.
- 4.16 In other cases, the regulations are positive or pro-active in nature, in that they require suppliers to behave in a certain way. For example, all providers of public electronic communication services to domestic and small business customers are required to have a code of practice, approved by Ofcom, which sets out the procedures that will be followed when dealing with customer complaints<sup>19</sup>.
- 4.17 The regulations that make up the current framework also vary in terms of their status and coverage. Three main categories of regulation can be distinguished:
- cross-sectoral statutory regulations, which apply to all sectors of the economy;
  - sector-specific statutory regulations that are specific to the communications sector or specific to the use of communications networks and services; and
  - various self-regulatory and co-regulatory initiatives, where organisations representing or supported by industry have a significant role in regulation, either with or without statutory backing.

## **Cross-sectoral statutory regulations**

- 4.18 A significant proportion of the rights and obligations that apply in communications markets also apply in many other markets.
- 4.19 Of these cross-sector consumer protection regulations, most that might be relied upon in communications markets come within part 8 of the Enterprise Act. These include<sup>20</sup> regulations covering misleading advertising, doorstep selling, distance selling, unfair contract terms, consumer credit, TV advertising, comparative advertising, indication of the prices of products, sales of consumer goods and associated guarantees, data protection and privacy (use of telecommunication services for direct marketing purposes), e-commerce and medicines advertising.
- 4.20 A new general right for domestic consumers not to be treated unfairly will be introduced across the EU by July 2007<sup>21</sup>. The EU is also introducing greater powers

<sup>19</sup> This requirement is established by General Condition 14.

<sup>20</sup> Statutory Instrument 2003 No 1374, *The Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003*

<sup>21</sup> *Unfair Commercial Practices Directive, 2005/29/EC*

for regulatory authorities to cooperate across borders, including outside of the EU. This will enable better regulation of international suppliers<sup>22</sup>.

- 4.21 Consumers can take two different approaches to making complaints about denial of statutory rights:
- they can take private action through the courts (such as the small claims court); or
  - consumers can ask a regulator with enforcement powers under the relevant piece of legislation to consider investigating.
- 4.22 The Enterprise Act empowers many organisations to investigate complaints made under part 8 of the Act, including the OFT, Trading Standards, Ofcom<sup>23</sup> and the Office of the Information Commissioner. Some offences under these pieces of legislation may also be criminal offences, subject to investigation by the police. In practice, complaints are generally considered by the regulator best placed to do so in any particular case and complaints about communications markets will often be passed to Ofcom. The OFT has a coordinating role, aimed at ensuring that complaints are properly dealt with.
- 4.23 It is important to note that, under the Enterprise Act, an infringement is one that harms the “collective interests of consumers”<sup>24</sup>. Supplier behaviour that causes harm to an individual consumer may not therefore constitute an infringement: it will depend on whether the behaviour is also likely to harm others.
- 4.24 Examples of investigations using cross-sector statutory regulations in communications markets include:
- The Police Services High Tech Crimes Unit has investigated some complaints about criminal activities related to rogue internet diallers and in May 2005, the City of London Police Economic Crime Department (ECD) executed six warrants and arrested four men on suspicion of conspiracy to defraud customers of the telephone networks (using automated diallers).
  - Following investigation by Bristol Trading Standards, prosecutions have been successfully brought under the Trade Descriptions Act and the Consumer Protection Act against companies and individuals involved in premium rate prize draws.
  - Following an investigation by Nottingham Trading Standards, a premium rate service provider was convicted under the Trade Descriptions Act, fined £650 and ordered to pay £1,000 costs.
  - Following an investigation by the Office of Fair Trading (OFT) into a premium rate competition service, a company has given undertakings that it will not publish misleading mail shots and has been fined £10,000.
  - In February 2005, Ofcom advised a calling card supplier that it considered certain advertisements used by the supplier were misleading. Ofcom also advised the company that it considered that some of the terms used its contracts constituted unfair contract terms. The supplier provided Ofcom with signed undertakings regarding its terms and conditions and the manner in which its calling cards are

<sup>22</sup> Consumer Protection Cooperation Regulation(EC), No 2006/2004

<sup>23</sup> Statutory instrument 2003 No 1399, *The Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation, Designation of Public Bodies as Designated Enforcers and Transitional Provisions) Order 2003*

<sup>24</sup> Sections 211 and 212

advertised to ensure compliance with the misleading advertising and unfair contract terms regulations.

- Ofcom was referred a complaint by Leicestershire County Council against a mobile network operator about terms and condition in consumer contracts and promotional literature for insurance cover. Ofcom concluded that contracts for seven of the operator's services contained potentially unfair terms and accepted undertakings from the operator to remove or revise the relevant clauses. Ofcom also considered that the promotional literature for insurance cover was potentially misleading. The investigation was closed in March 2005 after the mobile network operator submitted revised promotional literature.
- 4.25 Ofcom's involvement in the enforcement of cross-sectoral statutory regulations is limited to its role as a designated enforcer of certain provisions of the Enterprise Act. This role does not tend to involve the investigation of individual complaints because, as noted above, infringements only arise where there is harm to the collective interests of UK consumers. There are some exceptions to this general rule. For example, Ofcom may investigate an individual complaint against unfair contract terms, on the grounds that other consumers are also likely to be affected.

### Sector-specific statutory regulations

- 4.26 As noted above, the rapid pace of technological change in many communications markets, coupled with the ease of market entry, means that the potential for harm is greater in the communications sector than in many other markets. Recognising this increased risk, the Communications Act establishes some rights and obligations that are specific to communications markets, and some regulations specific to the use of communications networks and services.
- 4.27 Under the Communications Act, the main obligation on suppliers who use networks and services to supply or promote a product is not to "persistently misuse a network so causing anxiety, annoyance or inconvenience"<sup>25</sup>. Ofcom can launch an investigation into possible misuse, either in response to complaints received, or on its own initiative. If it determines that there are reasonable grounds for believing that an infringement has taken place, a notification can be issued, requiring the offending supplier to comply with the provisions of the Act. Failure to do so may result in a fine. The DTI is currently consulting on raising the maximum penalty for breaching this obligation from £5,000 to £50,000.
- 4.28 Ofcom has recently made use of the persistent misuse provisions of the Act to tackle the problem of silent calls. For example, a recent investigation concluded that a direct marketing company had engaged in persistent misuse of a network or electronic communications service by making silent calls. Ofcom issued a notification requiring the firm to provide Ofcom with evidence of compliance for a three-month period. Three monthly reports have since been provided that demonstrate compliance with the notification, and monitoring against the notification has therefore ceased.
- 4.29 The Act also empowers Ofcom to protect domestic and small business consumers by setting General Conditions on all (or a subset of) communications providers<sup>26</sup>. General Conditions that Ofcom has set using this power include:

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<sup>25</sup> s128-131

<sup>26</sup> s51(1)a

- 9: Requirement to offer contracts with minimum terms - This condition aims to protect consumers by ensuring that on the request of a consumer, providers must include a minimum set of terms in any contract.
- 11: Metering and billing – This condition requires providers to maintain their systems to ensure the accuracy of consumers' bills. The provisions of this condition are currently the subject of a consultation<sup>27</sup>.
- 14: Codes of Practice and Dispute Resolution – This condition requires providers to establish or comply with a number of codes of practice and dispute resolution procedures.
- 16: Provision of additional facilities – This condition requires suppliers to provide tone dialling and calling-line identification.

4.30 Under the terms of the General Condition 14, providers are subject to a number of requirements related to Codes of Practice:

- Basic Code of Practice regarding provision of Public Electronic Communications Services – It is mandatory that all providers of such services provide a code that sets out where domestic and small business customers can find basic information about the service provider, their products and prices as set out in General Condition 10.2
- Codes of Practice for Complaints – All providers of public electronic communications services are required to produce a Complaints Code of Practice which sets out procedures for bringing an unresolved complaint to an alternative dispute resolution (ADR) scheme. Ofcom has published guidelines<sup>28</sup> to help providers with the preparation of their codes, which must be submitted to Ofcom for approval. A list of providers with approved codes is available on the Ofcom website.
- Codes of Practice for Sales and Marketing – Providers of fixed-line telecommunication services<sup>29</sup> (or the wholesale inputs to such services) must establish and comply with a code that complies with guidelines issued by Ofcom. These guidelines state that codes should deal with issues arising before, during and after the point of sale with particular emphasis on the avoidance of mis-selling and misrepresentation.

4.31 In addition, Ofcom is currently consulting on the introduction of further codes of practice for the provision of information relating to Premium Rate Services and the usage charges for NTS calls<sup>30</sup>. Finally, Ofcom expects to consult in the near future on a code of practice covering phone services using internet protocol, (often known as VoIP) for example voice over broadband services.

4.32 If consumers have a complaint that a supplier has breached a general condition, they have a choice to complain to a regulator (in this case Ofcom) or take private action

<sup>27</sup> *Review of the Ofcom Metering and Billing Approval Scheme*, November 2005.

<sup>28</sup> *Customer Codes of Practice for handling and resolving disputes*, May 2005.

<sup>29</sup> In this condition, fixed line telephone services are limited to narrowband calls and line services provided by means of the following regulated products: wholesale line rental, indirect access, carrier-pre selection or wholesale calls.

<sup>30</sup> See 'Providing consumers with improved information about Number Translation Services and Premium Rate Services', a consultation document published by Ofcom on September 28, 2005.



through the courts<sup>31</sup>. However, under the Communications Act, consumers require consent from Ofcom before approaching the courts for redress<sup>32</sup>.

- 4.33 Ofcom's procedures for enforcing the obligations imposed by General Conditions are essentially the same as those described above in relation to persistent misuse. It can investigate a possible breach and, if it determines that there are reasonable grounds for believing that an infringement has taken place, can issue a notification to the offending provider, requiring it to comply within a specified period. If the provider fails to comply, Ofcom has the power to require the provider to remedy the consequences of a breach<sup>33</sup> and to impose a penalty of up to 10% of the turnover of the relevant business in the relevant period<sup>34</sup>.
- 4.34 Ofcom has recently stepped up its efforts to ensure that providers meet the obligations imposed on them by the General Conditions. In one case, Ofcom received a growing number of complaints from consumers dissatisfied with an internet service provider (ISP). The ISP did not appear to have a code of practice for complaints and was not a member of an alternative dispute resolution scheme. Ofcom's investigation found that the firm had failed to implement and comply with a dispute resolution scheme, and had failed to establish and maintain procedures that conformed to any applicable code of practice for complaints. Ofcom issued a notification to the ISP in May 2005 setting out its failure to comply with Condition 14 and giving the firm until July to comply. However, the ISP ceased trading and monitoring was therefore ceased.
- 4.35 In August 2005, Ofcom opened investigations into more companies about which Ofcom had received complaints from consumers, or where referrals had been made by Trading Standards or the ADR schemes. Following these investigations, in December 2005, Ofcom issued notifications to four companies of contraventions of General Condition 14 for failure to implement an approved alternative dispute resolution scheme. These companies had until January 2006 to make representations to Ofcom, after which time Ofcom may consider the imposition of penalties for continued non-compliance.
- 4.36 The final group of sector specific obligations are those placed on broadcasters, through conditions in their broadcasting licences, to comply with the broadcast advertising codes.
- 4.37 In December 2004, Ofcom revoked the broadcasting licence of a tele-shopping channel following complaints of delays in delivery of goods, poor customer service, and misleading and inaccurate guide prices. This followed a notification of Ofcom's intention to revoke the licence issued in November and a fine of £450,000. The company subsequently went into administration.

## Self- and co-regulation

- 4.38 Self-regulation is the term used to refer to regulations which do not have any statutory backing and are therefore not legally enforceable, and which are administered by a body that is accountable to the regulated suppliers. Co-regulation arises where self – regulation is given some statutory backing, typically through legally-enforceable

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<sup>31</sup> s104(1)

<sup>32</sup> s104(4)

<sup>33</sup> s94(3)c

<sup>34</sup> s97(1)

provisions which require suppliers to comply with the decisions of a self-regulatory body.

4.39 As noted in paragraph 3.52 above, Ofcom has a duty, in performing its functions, to take account of the desirability of promoting effective forms of self-regulation.

4.40 At present, there are a number of examples of self- and/or co-regulatory bodies involved in the regulation of the communications sector, including:

- ICSTIS, which is responsible for the regulation of premium rate services (PRS). ICSTIS is both a self- and a co-regulatory agency. For the majority of PRS providers who are not also communications providers<sup>35</sup>, the regulations administered by ICSTIS are self-regulatory in nature, as they are not legally enforceable. However, for those PRS providers who are also communications providers, the system is a co-regulatory one, as ICSTIS decisions can be referred to Ofcom for enforcement. ICSTIS also has arrangements for complaint referrals with the Office of Fair Trade (OFT), the Information Commissioner's Office (OIC) (spam), ASA (advertising) and the police (fraud and money laundering). These arrangements can work in either direction between the various bodies.
- Otelo and CISAS, which operate ADR schemes that have been approved by Ofcom for the purposes of General Condition 14. All providers of public electronic communications services to domestic and small business customers are required to belong to one of these two bodies, which deal with disputes between providers and their customers, which cannot be resolved through the suppliers' internal dispute resolution procedures. These arrangements are best described as co-regulatory in nature, as failure to comply with an Otelo or CISAS adjudication could in extreme cases result in expulsion from the scheme, which could in turn lead to a breach of General Condition 14.
- the Advertising Standards Authority (ASA), which is responsible for ensuring that advertising in all sectors of the economy meets the standards laid down in the Code of Advertising Practice (CAP) and the broadcasting advertising codes (BCAP). In relation to the CAP, the ASA is a self-regulatory body. In relation to the broadcasting codes, on the other hand, the system is a co-regulatory one, as television and radio broadcasters are required to comply with the codes as a condition of their licence. Amongst other things, the ASA handles complaints about misleading advertising. Its adjudications cannot be enforced directly through the courts, but are liable to be taken into account by those involved in the statutory regulation of misleading advertising, including the Trading Standards Authorities and, by Ofcom in the regulation of broadcasting licenses.
- the Direct Marketing Association (DMA), which is a global trading association of business and non-profit organisations supporting direct marketing tools and techniques. The DMA is a self-regulatory body which handles complaints about the

<sup>35</sup> In this context a communications provider is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service and either:  
 (i) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;  
 (ii) is under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service; or  
 (iii) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider.

marketing activities of its member firms, including silent calls. It also has a particular role in the communications sector, as the body responsible for administering the Telephone Preference Service (TPS) and Fax Preference Service (FPS) on behalf of Ofcom.

- 4.41 A number of other industry bodies also offer to investigate complaints received from consumers including the Video on Demand Association (VODA), which is a self-regulatory body for suppliers of video-on demand services, the European Calling Card Services Association (ECCSA), which is a self-regulatory body for suppliers of calling card services and ISPA (the internet service provider's association), another self-regulatory body, which will consider complaints that members have breached its code of practice.
- 4.42 The regulations administered by these self- and co-regulatory agencies typically take the form of codes of practice. The ICSTIS code and the broadcast advertising codes (covering TV and radio) managed by the ASA, are industry-wide and approved by Ofcom, where members of Otelio and CISAS devise their own codes and individually seek approval from Ofcom. In the other cases, codes are approved by the member firms of the self-regulatory body concerned. These bodies have an important role in handling consumer complaints and disputes which have not been resolved by the supplier, and in imposing sanctions where appropriate for breaches of the regulations.
- 4.43 When a consumer's complaint is upheld, a range of penalties may be imposed by the self-regulatory body, and redress may also be awarded. For example, in 2004 ICSTIS imposed fines of almost £0.5m on six companies for encouraging consumers to call premium rate numbers by sending unsolicited text messages, making unsolicited phone calls and leaving 'missed calls' messages on mobile phones. During the first half of 2005, ICSTIS issued fines totally £1.3m on 15 companies using automatic calling equipment to promote misleading prize claim lines.
- 4.44 As an example of co-regulatory enforcement action, Ofcom has recently carried out several investigations related to PRS following referrals from ICSTIS. In one case, Ofcom concluded that there were reasonable grounds for believing that a communications provider was in contravention of the PRS Condition<sup>36</sup>, for failing to comply with directions issued by ICSTIS. In February 2005, ICSTIS requested the communication provider to supply details of payments made by the communications provider to premium rate service suppliers. Ofcom issued a notification to the communication provider under section 94 of the Communications Act 2003, setting out the contravention and requiring the firm to comply with the PRS Condition by 16 September 2005. The communications provider has since gone into administration and Ofcom has been liaising with the administrators to pursue full compliance.
- 4.45 In December last year, Ofcom issued a direction to a communications provider requiring the immediate suspension of premium rate services, following referral of the provider by ICSTIS a few weeks earlier for failure to comply with directions issued by ICSTIS with regard to premium rate prize line services. This is the first time that Ofcom has used powers designed to deal with urgent cases<sup>37</sup>. Under Ofcom's procedure for urgent cases, the communications provider was not given the

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<sup>36</sup> The PRS condition is set under section 120 of the Communications Act 2003 to regulate the provision, content, promotion and marketing of premium rate services and requires providers to comply with directions given by ICSTIS to enforce the provisions of the approved ICSTIS code.

<sup>37</sup> s124(2)

opportunity to make representations before the direction was issued. This investigation remains ongoing.

- 4.46 Following referral by the ASA, Ofcom revoked the broadcasting licence of a teleshopping channel in February 2005, for failure to comply with the broadcast advertising codes, which is a condition of broadcasting licences. The ASA had been investigating the broadcaster following complaints from viewers about delivery and service levels. The ASA is able to refer complaints to Ofcom under section 27 of the Memorandum of Understanding which exists between Ofcom and the ASA.

## Consumer advice

- 4.47 There is a wide variety of organisations involved in the provision of advice on consumer rights, and the regulations through which they are established and enforced. Most obviously, consumers are provided with information by suppliers; indeed, some suppliers are obliged to tell consumers about complaints processes<sup>38</sup>. Consumers can also obtain information from independent bodies such as Consumer Direct, Citizens Advice Bureaux and the self- and co-regulatory bodies listed above. Half of the calls received by ICSTIS are general enquiries about premium rate numbers, including number checks.
- 4.48 Ofcom also has a role in providing consumers with information. It is currently redeveloping the Consumer Advice section of its website. The section on complaints enables consumers to file complaints online with the most appropriate complaint handling body. Ofcom has also taken a proactive stance on the issues that will face consumers as we approach the time when the analogue TV signal will be switched off. Ofcom has published advice to enable consumers to prepare for digital switch-over and is working with bodies such as SwitchCo and Government to inform consumers so as to minimise the opportunity for rogue traders to exploit consumers' lack of understanding. This will be an ongoing campaign.
- 4.49 When it comes to scams, it is clear that media coverage is key. The April 2004 feature on BBC's Watchdog programme about internet diallers led to a great deal of follow-up media interest, which had a measurable effect on consumers' awareness of the risks. Some of Ofcom's enforcement action has also gained significant profile, thus contributing to consumers' awareness of scams. For example, there was significant press coverage when Ofcom fined a teleshopping channel £450,000 in November 2004 for misrepresenting products it offered for sale and for failing to deliver goods, and most recently, when Ofcom took action to tackle silent calls.

## Effectiveness of the Framework and Proposed Priorities

- 4.50 Next, we consider the effectiveness of the current framework, with the aid of a number of case studies, which can be found in Annex 8. Each of the elements of consumer protection are taken in turn:
- regulations and rights;
  - consumer advice;
  - complaints handling and redress; and
  - monitoring and enforcement.

<sup>38</sup> Communication Act 2003, General Condition 14

## Regulations and rights

- 4.51 Based on its review of the case studies, complaints data and the existing framework, Ofcom considers that the regulations in place are generally effective at providing rights for consumers where there is potential for harm. However, we make three observations:
- When new problems emerge, which may not be adequately addressed by the existing regulations, it can take a long time to amend the regulatory framework so that effective action can be taken.
  - Some regulations are complex and fragmented, and may not be sufficiently targeted at offenders.
  - Some self-regulatory initiatives have not been effective, and have given way to some form of statutory action.
- 4.52 The first observation is that it can take a considerable period of time to change the regulations to permit effective action to be taken against a new kind of problem. In a fast-moving, technically sophisticated market, it is probably inevitable that new issues will emerge which demand a new kind response from the regulator. As the case studies show, it may be necessary to change some parts of the regulatory framework, to allow action to be taken, and this can take many months to achieve.
- 4.53 Currently, proposals for changing regulations such as General Conditions are subject to internal scrutiny, which takes a minimum of two months. Ofcom is then obliged to consult on the proposals, typically through a 10-week consultation. Stakeholder responses have then to be assessed, before a Statement can be published and the new rules take effect. In all, this is a process which normally takes 6-9 months, sometimes longer.
- 4.54 In some cases, changes in Ofcom's regulations may need to be accompanied or followed by changes in self- or co-regulatory provisions (e.g. the ICSTIS Code of Practice), or by Government action, for example, to increase the maximum size of the fines that may be imposed under the Act. In these cases, it can take up to 18-24 months, or possibly longer, to change the regulatory framework in the required manner.
- 4.55 In some exceptional cases, Ofcom has been able to fast-track regulatory changes. In the cases of approving revisions to the ICSTIS code to delay payments to service providers by 30 days and revisions to the PRS condition to capture diallers on 08xx and calls from mobiles, Ofcom consulted for just over a month<sup>39</sup>. There were common characteristics in these cases that made fast tracking appropriate:
- there was robust evidence of harm;
  - the scale of harm was large;
  - it was very likely that the level of harm would escalate; and

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<sup>39</sup> s48 of the Communications Act requires consultation for no less than a month.

- the suppliers who would bear the burden of regulatory changes, had been engaged in prior consultation and the issues had been in the public domain for some time.
- 4.56 The second observation is that some aspects of the regulatory framework are complex and fragmented, and may not be sufficiently targeted at offenders. In particular, Ofcom is concerned to ensure that the obligations on providers under the General Conditions, to establish and comply with codes of practice, do not impose unnecessary costs on compliant businesses.
- 4.57 These codes of practice are not standard but are specific to the company concerned. This has the advantage that the codes can be tailored to the specific circumstances of the individual firm, although it may mean that the costs of developing and gaining approval for the codes are somewhat higher than would be the case if a standard industry code were adopted.
- 4.58 The effectiveness of the codes is also dependent on Ofcom's powers under the Act. Ofcom has the power to issue Orders requiring suppliers to stop a prohibited form of behaviour within one month. If the suppliers do not comply, they can be fined. This means that, where a provider fails to meet the requirements of a General Condition, effectively they have to be given a warning, before a sanction can be imposed. This may dilute the deterrent effect of Ofcom's enforcement powers, and may reduce the incentive for providers to incur the costs involved in complying with an obligation, for example, to introduce a code. As a result, the burden of regulation may fall unduly on firms that comply with the regulations.
- 4.59 The third observation, reflected to some extent in the case studies, is that some examples of self-regulation have not been effective.
- 4.60 More specifically, Ofcom (and Oftel before it) has on occasion sought to encourage the industry to develop a self-regulatory approach, only to find that it has been unsuccessful, and that some statutory intervention is required. The main reason for this is that the suppliers concerned have not always had a strong enough incentive to comply with a regime based on self-regulation. Of course, this applies particularly to the dishonest and unscrupulous suppliers the regime is intended to police. The result can be an ineffective regime, in which the costs of regulation fall most heavily on the compliant majority.

## **Priorities and proposals with regard to regulations and rights**

- 4.61 In the light of the above, Ofcom believes that there is a case for:
- looking for ways to make the regulatory framework more adaptable to changing circumstances, and better able to respond to new problems as they emerge ;
  - reviewing the requirements for effective self- and co-regulation; and
  - reviewing the consumer-related General Conditions, to see if they can be simplified, and better targeted towards offending firms.
- 4.62 The first priority is to reduce the time it takes to deal with new consumer protection issues as they arise. In order to tackle this, Ofcom proposes:

- To develop an early warning system by encouraging complaint-handling organisations, including ICSTIS, Otelio and CISAS, to share information about complaint levels by type. This sort of information will enable Ofcom to track types of complaints to identify those that grow rapidly.
  - To agree with complaint-handling organisations criteria for classifying types of complaints and a process for updating these criteria, so that data can be more easily compared and aggregated.
  - To look for opportunities to fast-track changes in regulations, where these are necessary to address cases of consumer harm.
- 4.63 When Ofcom identifies new scams using this early warning system, Ofcom will share this information with other enforcement agencies, through the OFT's Scams Enforcement Group, and through the information network that is being developed by the OFT's Scambusters team in order to coordinate enforcement action.
- 4.64 In addition, Ofcom will work with the relevant government bodies to see if the enforcement powers for the new EU Unfair Commercial Practices Directive can be implemented in a way that improves the flexibility and speed of the regulatory framework. The challenge here will be to ensure that the enforcement of the new regulations is sufficiently flexible to handle new forms of undesirable behaviour quickly, reducing the need for regular and potentially time-consuming modification of existing legislation.
- 4.65 The second priority is to consider the circumstances in which self- and co-regulation are likely to be effective. Ofcom proposes to carry out a review of this topic, looking in particular at the factors which affect the incentives on suppliers to comply with self-regulatory regime.
- 4.66 The third priority is to review the consumer-related General Conditions, to ensure that the impact of regulation is appropriately targeted at offenders, that the conditions are as simple as possible, and that the regulations are sufficiently flexible to deal with prospective advances in technology and changing market conditions. Ofcom proposes to review these General Conditions in phases, once the review of self- and co-regulation has been completed. The review is expected to begin during the 2006/07 financial year.

*Question 7: Do you agree with the assessment and priorities for rights and regulations?*

## **Awareness of rights and risks**

- 4.67 In Ofcom's view, the current arrangements for advising consumers of their rights, and of the risks they face in communications markets services, have two shortcomings:
- there is no single source of comprehensive and accurate information; and
  - consumers are not always given sufficient early warning of scams, to enable them to take precautions against them.
- 4.68 We have identified that even with the plethora of agencies giving advice, it is often difficult to obtain complete information on rights and indeed some of the information available can be contradictory.



- 4.69 Ofcom research shows that consumers consider awareness of their rights to be important. This is not surprising, given the media coverage that scams can generate. Indeed, media attention helps raising consumers' awareness of an issue and will often increase consumers' ability to help themselves and inform them which organisations are involved in handling complaints with respect to particular scams.
- 4.70 The research also shows that most residential consumers are aware of rights they might rely on frequently such as choosing whether to include their details in the telephone directory (75%) withholding phone numbers (74%) and access to operator services (72%). However, awareness of rights that they might only use once, at the point of purchase, was generally lower. For example, around half of all consumers know they can complain about unfair contract terms, and that they should be advised if their call is being recorded. Awareness was lower still for the right to receive a code of practice from their supplier (36%). With many of these rights, awareness is significantly lower than the proportion of people who consider it important to know. Each of these rights is considered 'important to know' by at least two-thirds of consumers.
- 4.71 With regard to the processes for asserting rights, Ofcom research also shows that 70% of telecoms complainants were unaware of the existence of a complaints procedure and, of those that had made a complaint a significant minority (30%) thought that the process was unclear. In the first quarter of 2005, ICSTIS found that 35% of calls it received were outside its remit and as noted above, more than two thirds of consumers escalate complaints prematurely. This indicates the degree of confusion among consumers.

### **Priorities and proposals for raising consumers' awareness**

- 4.72 In the light of the above, Ofcom considers that the priorities for the coming year should be:
- promoting awareness of scams; and
  - provision of improved information about consumer rights and about how to complain.
- 4.73 The first of these priorities is to raise consumers' awareness of new scams. In addition to empowering consumers to protect themselves, Ofcom wants to send powerful signals to would-be rogue traders that such harm will not be tolerated.
- 4.74 In achieving this priority, Ofcom will bear in mind its obligation to be evidence-based. Therefore Ofcom proposes a two pronged approach:
- To publish new scam alerts, that describe the type of behaviour identified through the early warning system and distribute these pro-actively via an email registration service on the Consumer Advice section of its website. The objective of these alerts will be to raise awareness quickly. In addition to this, issues generating a substantial number of complaints or enquiries to the OCC will be published on Ofcom's website, and will be updated several times a day, to inform consumers of the latest developments.



- To revamp Ofcom's Competition Bulletins by making them easier to read, for instance by adding in plain English the nature of the offence. This way, it will be more accessible to journalists and will ultimately benefit consumers. This bulletin is already available as an email service and already identifies providers that are under investigation.
- 4.75 The scam alerts and the bulletins will be made available to other enforcement and advice agencies through the OFT's Scambuster team and its Scams Enforcement Group.
- 4.76 The second priority is information about regulations. Clearly, a starting point is to ensure that information about rights is available, correct, comprehensive and up-to-date. Therefore, Ofcom proposes to:
- Include advice with the Plain English Crystal Mark on the Consumer Advice section of Ofcom's website covering types of harm that occur repeatedly, advice on rights and signposting to other sources of information, where appropriate.
  - Offer training for service and call centre staff from other regulatory bodies on recognising and managing complaints. Interest in training of this nature has been expressed from suppliers as well as from independent advice organisations.

*Question 8: Do you agree with the assessment and priorities regarding consumers' awareness?*

## Complaints handling and redress

- 4.77 As discussed above, the existing regulatory framework deals with complaints handling and redress in a number of different ways:
- Where a problem arises between a consumer and a telecoms provider with whom they have a contractual relationship, it is dealt with through the provider's disputes handling process and referred if appropriate to the provider's ADR scheme for resolution.
  - Where a problem arises between a consumer and a service provider with whom they do not have a contractual relationship, but where the service is paid for through the telephone bill, it is normally handled by the service provider itself, and referred if necessary to ICSTIS for resolution. In this context it should be noted that ICSTIS's remit only covers "controlled premium rate services", which currently include only those PRSs which cost more than 10 pence per minute or per call.
  - If the concern is about a broadcaster's compliance with the broadcast advertising codes, then complaints can be referred to the ASA.
  - Sometimes a problem arises with respect to a supplier who uses a communications network or service to market a product. That is, a problem between a consumer and supplier, where there is no contractual relationship, where the supplier is not a broadcaster and where the service is not paid for

through the telephone bill. In these cases, the consumer may pursue the matter through the courts, ask a regulator to consider investigating or escalate the complaint to a self-regulatory body such as the DMA or the ASA.

- 4.78 Within this framework, Ofcom's role in dealing with individual consumer complaints is very limited. It fulfils its obligations under the Communications Act primarily by seeking to ensure that the procedures available for handling complaints, for example through the ADR schemes or ICSTIS, are effective. Ofcom does get involved in the investigation of some individual complaints, but this is normally to establish whether a pattern of behaviour exists that would justify prioritising action against a particular supplier (e.g. for persistent misuse), or whether there is harm to the collective interests of UK consumers, which might warrant action under the Enterprise Act. Ofcom's guidelines for dealing with complaints have been published and are available on the Ofcom website<sup>40</sup>.
- 4.79 In Ofcom's view, the structure of the current arrangements is appropriate, although there are some aspects of the complaints handling framework that could be improved. In particular, Ofcom's recent review of the ADR schemes found a number of shortcomings, including the following:
- Consumer dissatisfaction with the way in which communications providers handle complaints initially - leading to the majority of complainants approaching ADR schemes 'prematurely';
  - Issues around a lack of proper signposting to ADR, e.g. because complainants were not informed about the provider's complaints code of practice and/or because providers fail to issue a 'deadlock' letter;
  - Some dissatisfaction with the Schemes due to a lack of awareness of their role and understanding of their procedures; and
  - Examples of providers failing to pay the compensation awarded by ADR within time limits specified
- 4.80 With regard to the arrangements for PRS, Ofcom believes that considerable progress has been made in strengthening the regulatory framework over the past 18 months. To a considerable extent, this reflects the organisational improvements introduced by ICSTIS, as well as progress made in implementing the recommendations of Ofcom's review of PRS regulation, which were published in December 2004.
- 4.81 One outstanding PRS issue is whether the definition of controlled premium rate services should be extended to include services costing less than 10 ppm or per call. As part of its current review of NTS regulation, Ofcom is currently consulting on whether the definition should be extended to include calls to 0871 numbers, which cost 5-10 ppm or per call when made from a BT line<sup>41</sup>. The issue here is whether the consumer protection concerns over calls to this number range are sufficient to warrant an extension of regulation.
- 4.82 In relation to the fourth type of problem, where there is neither a direct nor an indirect relationship between the consumer and the supplier, Ofcom has not identified any

<sup>40</sup> *Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives*, July 2004

<sup>41</sup> *Number Translation Services: A Way Forward*, September 2005

significant shortcomings in the current arrangements, although it recognises the need to keep the situation under review.

## Priorities and proposals regarding complaints handling and redress

- 4.83 In the light of the above, Ofcom believes that the main priority in relation to complaint handling and redress should be to press ahead with the implementation of the recommendations of the ADR review and the issues arising from it:
- ADR Schemes should publish Key Performance Indicators covering staff competence, timeliness of decision-making and overall customer satisfaction.
  - In addition, the Schemes should publish regular reports showing the breakdown of complaints received by type.
  - CISAS should undertake and publish consumer satisfaction surveys comparable to the data currently produced by Otelo.
  - Schemes should notify Ofcom where a member's breach of the rules and/or decisions is sufficiently serious to consider expulsion from the scheme.
- 4.84 In addition, the review found that some communications providers appear not to be handling complaints effectively. Given that the effectiveness of ADR (intended as dispute resolution as a last resort) is largely dependent on the way in which complaints are handled initially, Ofcom intends to proactively encourage communications providers:
- to ensure that complainants are correctly signposted to ADR - by ensuring that the Complaints Codes of Practice is easily accessible;
  - to record and monitor complaints accurately to ensure that consumers are directed to ADR at the right time;
  - to issue a 'deadlock' letter whenever the provider decides that a complaint cannot be resolved. Complainants should not be made to wait for twelve weeks as a matter of course before being referred to ADR; and
  - not to direct enquiries or complaints to Ofcom, nor prematurely to an ADR.
- 4.85 Ofcom would also welcome a constructive dialogue with the Schemes, industry and consumer interests on the scope for further enhancing the effectiveness of the overall complaints handling process. In support of this objective, Ofcom will continue to monitor the available research and will undertake further research where appropriate.

*Question 9: Do you agree with the assessment and proposed priorities regarding complaints handling and redress?*

## Monitoring and Enforcement

- 4.86 As noted above, during 2005 Ofcom developed a more vigorous approach to the enforcement of consumer rights, opening more investigations into more providers. The increase in investigations activity reflects a determination to ensure that communications markets do not provide rogue traders with opportunities to exploit consumers.

- 4.87 Notwithstanding this increase in activity, Ofcom considers that its current efforts are to some extent hampered by:
- the absence of an effective early warning system, which makes it more difficult to open investigations in a timely manner; and
  - the processes for escalating complaints from self and co-regulatory bodies, which can in some cases be slow and ineffective.
- 4.88 On the first point and as noted at the beginning of this section, the data logged by Ofcom do not give a complete picture of the harm experienced by consumers in communications markets. There is a need to pull together information from a variety of sources, in a regular and systematic manner, particularly to allow new problems to be identified before they become too serious.
- 4.89 On the second point, Ofcom believes that there is scope for improving the effectiveness of co-regulation by working with its co-regulatory partners to enhance procedures for the referral and investigation of unresolved cases. Progress has already been made in relation to referrals from ICSTIS, and could usefully be extended to other co-regulatory bodies, such as Otelio and CISAS.
- 4.90 Following the increase in harm caused by premium rate service providers last year, Ofcom and ICSTIS reviewed their processes for escalating complaints. The outcome of this review was an agreement that ICSTIS would make more formal referrals, using a pre-specified format. This format was designed with Ofcom, to enable Ofcom to consider complaints referred by ICSTIS. This work has enabled ICSTIS to refer more complaints successfully and significantly speed up the process.

### **Priorities and proposals regarding monitoring and enforcement**

- 4.91 Ofcom considers that its main priority in this area should be to continue the more vigorous approach to the enforcement of consumer rights which it has been developing over the past year. The aim will be to send a very strong signal to possible rogue suppliers that any breach of the regulations will be met by swift and effective enforcement action. Ofcom will seek to ensure that the resources devoted to this enforcement effort are sufficient to deliver the desired outcome.
- 4.92 In addition, Ofcom believes that more can be done in relation to:
- monitoring evidence on consumer problems, and particularly on the emergence of new issues;
  - developing its own skills and experience in the enforcement of consumer rights; and
  - streamlining processes for handling cases referred from co-regulatory bodies.
- 4.93 Taking the first priority – monitoring evidence – Ofcom proposes to use the proposed early warning system to identify priorities for investigation.
- 4.94 The second priority is to develop Ofcom's expertise in this area. This is particularly important given the greater powers it has, in comparison to the previous regulators,

and the additional powers it may gain when new EU legislation on consumer protection (see paragraph 4.20) is implemented in the UK. To address this aim, Ofcom intends to establish a dedicated investigations team, focused on enforcement of consumer rights.

- 4.95 The third priority refers to the efficiency and effectiveness of processes for referring complaints and other matters from co-regulatory bodies. To address this priority, Ofcom proposes to continue working with ICSTIS, the ASA, Otelo and CISAS to develop streamlined processes for the referral and investigation of cases related to consumer protection. The aim here will be, through improved coordination, to avoid any unnecessary duplication of effort in the investigation process, and to allow cases to be dealt with more quickly.

*Question 10: Do you agree with the assessment and priorities regarding monitoring and enforcement?*

## Section 5

# Consumer Empowerment

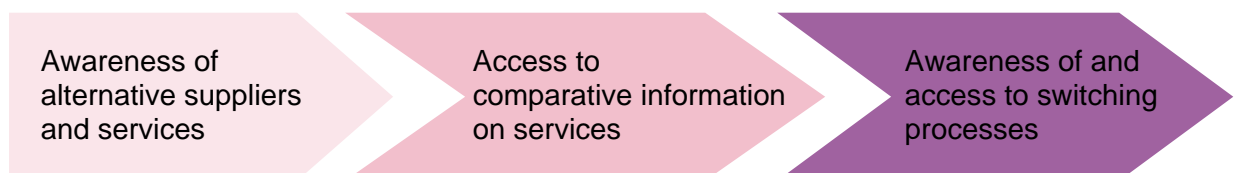
## Introduction

- 5.1 Ofcom's principal duty in carrying out its functions is to further the interests of citizens and to further the interests of consumers, where appropriate by promoting competition. Consumers play a vital role in promoting competition. Appropriately active consumer behaviour is a key condition for healthy competition to exist in a market. Conversely, uncompetitive markets deprive consumers of choice and leverage to demand lower prices and better service.
- 5.2 Consumers can influence the market in many ways - searching out the best offers in terms of price and quality, readily switching between existing or new suppliers and adopting new technology and services. The ability to do this can be characterised as 'consumer empowerment'.
- 5.3 This section contains many references to market research. Unless stated differently, the relevant research can be found in Annex 5 or 6 of this document.

## Elements of consumer empowerment

- 5.4 In line with Ofcom's overall objectives, empowered consumers are consumers equipped with the information, skills and confidence needed to obtain the best possible outcome from the market. The following elements need to be in place in order for consumers to be empowered:

**Figure 9: Elements of empowerment**



- 5.5 The first stage of consumer empowerment is awareness of alternative suppliers and services. Consumers need to be aware that choices are available to them. Without this knowledge, consumers will not search for information or make price comparisons. At a general level, consumers also need to be aware of the features and capabilities of new services and technologies, so that they can assess their potential benefits.
- 5.6 The second element of consumer empowerment is access to comparable information on services. Without this information consumers cannot determine whether they would be better off switching supplier.
- 5.7 Awareness of alternative suppliers and services, and access to comparable information, are preconditions for switching. The third element of consumer empowerment is therefore awareness of and access to switching processes.
- 5.8 In general, competition between providers will deliver competitive prices, quality, innovation and choice. However, Ofcom is aware that communications markets may not always function effectively and efficiently to meet consumers' needs. For

example, consumers may not be satisfied that their supplier ensures they are getting the deal that is best for them and there may be uncertainty amongst non-switchers about how easy it is to switch.

- 5.9 In other words, competition may not deliver the desired benefits because of issues related to information availability and switching. This has the potential to cause several different types of consumer detriment:
- Consumers may not participate in the market at all, because they have limited awareness of the products and services on offer, or conversely because they are confused by the available information (sometimes referred to as “information overload”);
  - Consumers may pay too much;
  - Consumers may buy the wrong product; and
  - Consumers may be let down by the product, because it turns out to lack the expected level of quality.
- 5.10 There may of course, be reasons other than information why consumers do not buy the cheapest product - for example, consumers may be prepared to pay a premium because of a superior quality of service or brand loyalty, the potential savings when switching to an alternative supplier may be perceived to be too small or they may simply be prepared to pay more because the service is a low expenditure item.

### **Ofcom's approach to consumer information**

- 5.11 Ofcom does not consider it has a primary role in improving information flows between suppliers and consumers – this is best left to the market. However, we recognise that in some cases the market may not deliver to consumers the information they want. Where the evidence suggests that this has resulted in consumer harm, or is likely to do so in the future, there may be a case for regulatory intervention.
- 5.12 In these cases, Ofcom will first consider the scope for a self-regulatory or co-regulatory initiative, or for an initiative that would involve the provision of information by a third party. Only in exceptional cases will Ofcom itself provide information about suppliers or their products and services.
- 5.13 This approach mirrors Ofcom's regulatory principles – it is evidence-based and underpinned by a bias against intervention.
- 5.14 Consistent with this approach, Ofcom will continue to develop the Consumer Advice section of its website during 2006. This section will provide easy to use advice on communications services, protection related issues and signposting to other relevant organisations where appropriate.
- 5.15 It will be designed to improve the ease with which consumers can obtain information on different aspects of communications services such as where to find price and quality of service information, links to relevant websites, advice on how to decide between different offers and suppliers. It is also aimed at enhancing consumers' ability to deal with new problems as they emerge.

**Question 11: Do you agree with Ofcom's approach to the provision of consumer information?**

- 5.16 The rest of this section provides evidence of the three elements of consumer empowerment, outlines Ofcom's current approach to these issues and sets out some proposals for the future, taking account of Ofcom's approach to consumer information outlined above.

## Awareness of alternative suppliers and services

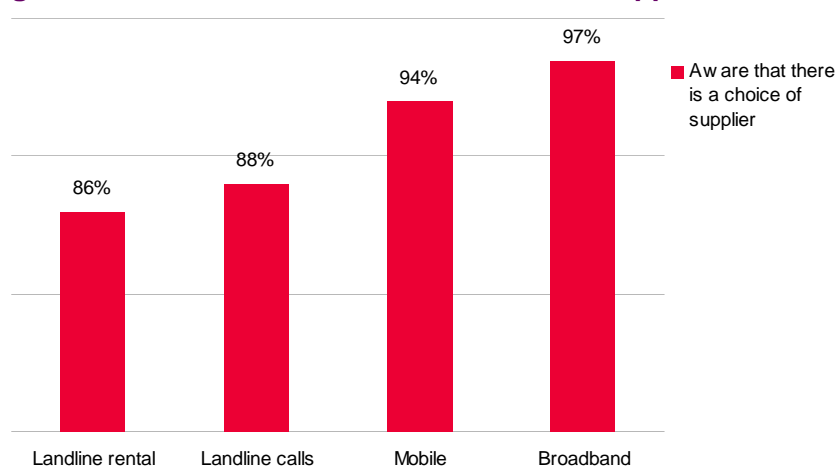


- 5.17 The first aspect of consumer empowerment is awareness of alternative suppliers and services. Consumers need to be aware that choices are available to them. Without this knowledge, consumers will not search for information or make price comparisons.

### *General awareness of alternative suppliers*

- 5.18 The large majority of consumers are generally aware that they have a choice of suppliers in most communications markets. Over 90% of consumers are aware of choices in the mobile and internet markets, and while they may be less certain about whether they have alternatives in the fixed telephony market, awareness is over 85% for both line rental and calls suppliers. Across all markets, awareness of choice is lowest amongst older consumers (65+).

**Figure 10: General awareness of alternative suppliers in telecoms markets<sup>42</sup>**



### *Awareness of named alternative suppliers*

- 5.19 There are currently around 15 mobile network operators/service providers in the UK. 97% of mobile decision makers were able to name at least one alternative supplier,

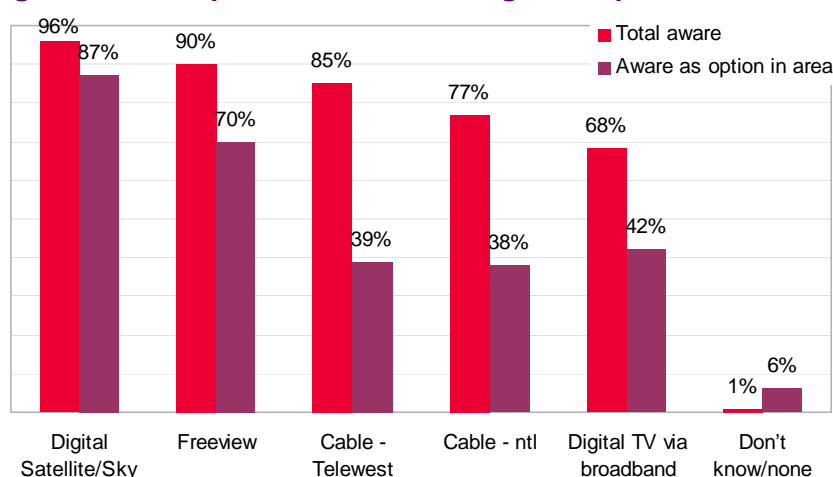
<sup>42</sup>Base: 1404 landline decision-makers, 1307 landline calls decision-makers, 1551 mobile decision-makers, 567 broadband decision-makers, survey conducted by MORI for CCP, Q2 2005



and during 2003 - as reported in the Strategic TSR - around seven in ten consumers were aware of at least three, both without prompting. This relatively high level of awareness is not surprising given the high visibility of the mobile market in terms of handsets, high street shops and advertising.

- 5.20 In general, as illustrated above in Figure 10, most residential consumers are aware that they have choices for purchasing landline services - however this is lower than mobile and broadband. During 2003 almost two-thirds of fixed line decision makers were unable to name any indirect fixed calls suppliers without prompting. With a reduction in spending on fixed line calls (and corresponding increase in spend on mobile and internet) and with little product differentiation, it may be the case that consumers are less interested in fixed line telephony. Indeed research suggests that consumers are unwilling to spend more than 30 minutes looking for fixed line alternatives, compared to 2 hours for broadband and mobile (see below). However, high penetration of fixed lines, the presence of CPS and WLR providers and strong uptake of these services demonstrates that the market is getting more competitive and consumers are increasingly becoming aware of alternatives.
- 5.21 The level of supplier choice is higher in the internet market than in either the fixed lines or mobile markets. Most (92%) internet decision makers were spontaneously able to name (without prompting) at least one alternative during 2003 and were the most satisfied with the level of supplier choice, compared to consumers in the other telecoms markets. In terms of general awareness CCP data suggests 97% of broadband customers are currently aware that they have a choice of suppliers.
- 5.22 Additional Ofcom commissioned research indicates that almost all (99%) UK adults with a landline are aware of at least one multi-channel TV supplier or platform, when prompted. However, awareness is lower amongst older consumers - in particular those aged 65+ - and consumers are less certain about which options are available to them in their local area.

**Figure 11: Prompted awareness of digital TV platforms<sup>43</sup>**



#### *Awareness and understanding of technology terms*

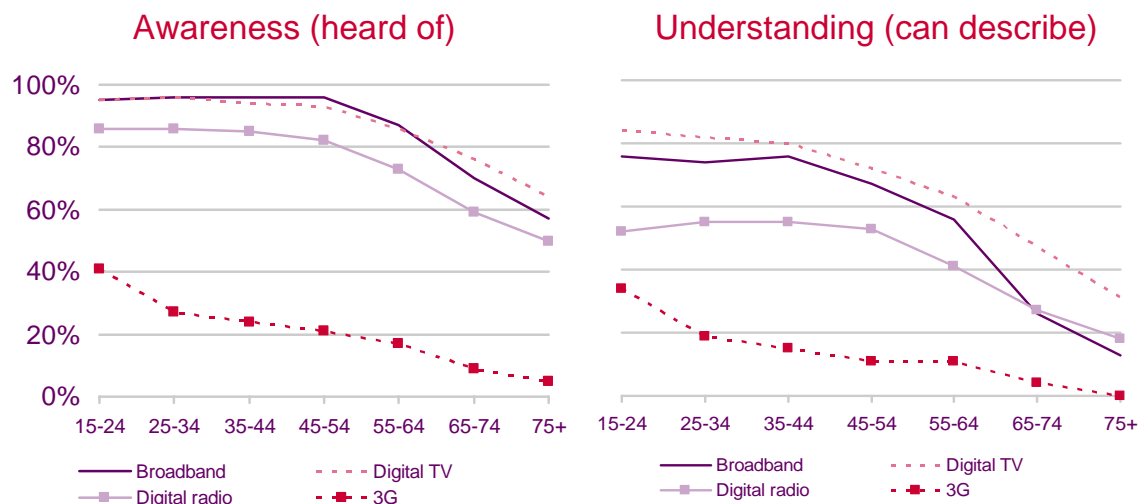
- 5.23 To be empowered, consumers also need to be aware of new technologies and products and understand their potential benefits. Limited awareness and

<sup>43</sup> 2110 UK adults aged 18+ with landline, commissioned by Ofcom, conducted by ICM, 23-29 September 2005

understanding of new technologies could inhibit the take-up of new services and therefore indirectly cause harm.

- 5.24 Ofcom's Consumer Panel research<sup>44</sup> reports that most consumers have heard of the terms 'broadband', 'digital television' and 'digital radio', though awareness and understanding of the term '3G' is low in comparison. In general, awareness of technology terms decreases with age, and is significantly lower amongst people with disabilities and those with low household incomes.

**Figure 12: Awareness and understanding of communications services terms by age<sup>45</sup>**



- 5.25 The strong increase in the number of broadband connections shows that take-up of this service in particular has not been constrained by lack of awareness or understanding. 63% of households with internet access at home now have a broadband connection, rising from 30% at the beginning of 2004. And whilst take-up of digital television will be driven by digital switchover, consumers appear to be aware of it already.
- 5.26 The lower awareness of '3G' could be related to the fact that these services have not been widely marketed to consumers using the term '3G' and in fact awareness of the service capability may be considerably higher. In addition, we believe that mobile providers have a strong incentive and the marketing power to successfully launch 3G services and get consumers to adopt them.

## Conclusions

- 5.27 The evidence suggests that in general, consumer awareness of alternative suppliers and services is between 86-97% depending on the market. In those areas where knowledge and understanding is lower – for example in naming alternative fixed calls suppliers – we believe that the emergence of new suppliers and services in these markets has and will continue to boost consumer awareness

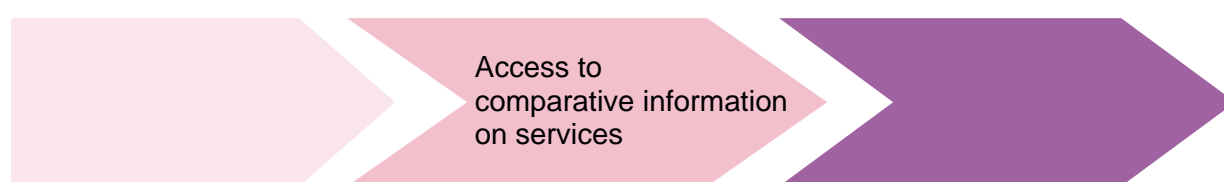
<sup>44</sup> ([http://www.ofcomconsumerpanel.org.uk/publications/consumer\\_panel\\_report.pdf](http://www.ofcomconsumerpanel.org.uk/publications/consumer_panel_report.pdf))

<sup>45</sup> 2519 UK adults, October 2004, Ofcom Consumer Panel Survey, conducted by saville rossiter-base, October 2004

- 5.28 Based on this, we do not think there is enough evidence for Ofcom to take action and increase general awareness of new or existing technologies. This conclusion is consistent with Ofcom's approach to consumer information which is that we will intervene only where the market is unable to deliver to consumers the information they want and where this clearly leads to consumer harm.
- 5.29 However, we do recognise that older people appear to have significantly lower levels of awareness. The Consumer Panel's second wave of research, due to be published in Q2 2006, will provide further information on this issue.

Question 12: Do you agree with Ofcom's conclusion on consumer awareness of suppliers and services?

### Access to comparative information on services



- 5.30 The second element of consumer empowerment is access to comparable information on services. Without this information consumers cannot calculate whether they would be better off switching supplier.

### Price

- 5.31 Cost is the most important aspect for consumers choosing a telecoms supplier and there is some demand for cost comparisons across all markets.
- 5.32 Almost three-quarters of decision makers claim they would potentially use cost comparisons when choosing a new supplier (see table below). Information on call charges is most wanted in both the fixed and mobile markets and line rental/subscription comparisons is most wanted in the multi-channel TV and internet markets. This reflects the types of tariff packages consumers subscribe to in each market.
- 5.33 However, across telecoms markets - and especially for mobile (38%) and internet (37%) - a significant minority of consumers perceive carrying out cost comparisons to be difficult. This suggests the consumer demand is potentially one for clearer, more user-friendly price comparisons, or it could suggest that consumers do not know where to find the information.

**Figure 13: Potential use of alternative cost comparisons** <sup>46</sup>

	Total claimed use of cost comparisons	Desired information on cost			
		Calls	Line rental/ subscription	Package/tariff /inclusive calls	Discount schemes
Landline	71%	60%	47%	32%	25%
Mobile	74%	56%	39%	44%	n/a
ISP	76%	38%*	64%	42%	24%
**TV (multi-channel)	73%	n/a	68%	46%	29%

\* asked to those that pay for calls while online

\*\* TV – 50% interested in installation costs

5.34 It should be noted that claimed intentions are rarely achieved in practice. We estimate that actual use of price comparison information is likely to be significantly lower than claimed. Nevertheless, we can expect the telecoms market to evolve and become more competitive - particularly following the undertakings accepted by Ofcom from BT in the context of the TSR. As the number of suppliers increases, we see products being bundled and priced in ever-more complex ways, such that the need for comparative price information can be expected to increase rather than diminish.

### Ofcom's approach

5.35 Ofcom has an obligation under Article 21(2) of the Universal Service Directive (USD) to encourage the provision of information to enable end-users, as far as appropriate, to make an independent evaluation of the cost of alternative usage patterns. This provision is reflected in General Condition 10.1 which among other things requires providers to publish clear and up-to-date information on prices and tariffs.

5.36 As set out above, Ofcom does not consider it has a primary role in improving information flows between suppliers and consumers. However, there may be a case for Ofcom to consider intervening where the market fails to deliver and this clearly leads to consumer harm. For example, to help address concerns regarding the high prices that some mobile operators are charging customers to use their phones abroad, in January 2006 Ofcom published advice for consumers on how to understand and compare international roaming prices.

5.37 Prior to Ofcom's creation, Oftel explored a number of options to encourage the provision of comparable price information. An earlier scheme whereby providers self-provided information for a price comparison website ('Phonebills') did not deliver the anticipated benefits. Following this, in 2002, Oftel introduced a scheme called Oftel PASS for websites which compare the prices of different suppliers and provide impartial and accurate information<sup>47</sup>. The scheme was adopted and re-branded as the 'Ofcom PASS' in 2003<sup>48</sup>.



<sup>46</sup> 2217 UK adults, Q1 2005, Ofcom residential tracking study, conducted by MORI

<sup>47</sup> <http://www.ofcom.org.uk/static/archive/oftel/publications/consumer/2002/pass0902.htm>

<sup>48</sup> [http://www.ofcom.org.uk/telecoms/ioi/orp/comparative\\_20031214/](http://www.ofcom.org.uk/telecoms/ioi/orp/comparative_20031214/)

- 5.38 This approach seeks to balance two factors. First, it recognises that the market has evolved to support intermediaries which provide price comparison information. Secondly, it helps to ensure that such services provide information of a quality which allows consumers to make an informed and fair choice, as required by the USD.
- 5.39 This quality standard is underpinned by the scheme's accreditation process. In order to obtain accreditation, providers must meet ten criteria set out in the Ofcom PASS Code<sup>49</sup>. These include ensuring that the service is independent, up-to-date, covers a minimum number of suppliers in specific markets and is free to the end-user. A PASS-approved website may also use indicators other than price, including quality of service.
- 5.40 The accreditation process involves a rigorous technical audit by an independent third party in order to approve the accuracy and impartiality of a provider's calculator and methodology. This is a complex and difficult process and reflects the high standards Ofcom has agreed with the current auditors, Analysys.

## Assessment

- 5.41 At present, one provider – uSwitch - has secured accreditation for its fixed line price comparisons. uSwitch's service compares the prices of around 30 suppliers including BT and Kingston (as required by the Code) and many of the market leaders. The site also provides information about quality of service indicators such as levels of customer care and the availability of online billing. It accommodates the needs of visually or hearing impaired consumers and offers a comparison service by phone for those without access to the Internet.
- 5.42 In addition to uSwitch, the scheme has attracted expressions of interest from other providers of information from which we conclude that PASS accreditation is perceived as a differentiator by intermediaries in the market.
- 5.43 However, consumer awareness of the PASS scheme appears to be low. Awareness stood at 8% in November 2003 – slightly higher amongst older consumers and ABC1 social groups and a small rise in awareness since the first measurement in September 2002 (6%). In addition, Ofcom's Consumer Panel research from October 2004 reports that 1% of consumers cite specific cost comparison websites as a trusted source of information.
- 5.44 But more generally, awareness of the existence of fixed line price comparison websites doubled to 32% between 2002 and 2003. Looking ahead, our research shows that while personal sources such as friends and family remain the most popular source of trusted information, around a fifth of consumers say they would turn to the internet for trusted information. In addition, people using friends and family for advice may well benefit indirectly from price comparison information provided on websites. If use of the internet continues to rise, we would expect web-based providers to attract an increasing proportion of demand for price comparison information.
- 5.45 Ofcom recognises markets have changed significantly since the PASS scheme was established and much of the research related to this was carried out. This is particularly true for the fixed calls market for which uSwitch provides price

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<sup>49</sup> [http://www.ofcom.gov.uk/telecoms/ioi/orp/comparative\\_20031214/pass20031214](http://www.ofcom.gov.uk/telecoms/ioi/orp/comparative_20031214/pass20031214)

comparisons and is accredited by Ofcom. We therefore consider it timely to conduct a full review of the PASS. As part of this Ofcom would undertake further research into consumers' usage and knowledge of price comparison services.

- 5.46 However our research also shows that while those without internet access – frequently older and low income consumers - are less likely to look for information at all, providing price information solely via websites therefore would risk excluding certain groups of consumers.

*Policy options/proposed approach*

- 5.47 Our conclusion, that the level of consumer empowerment relating to access to comparative information on services varies between different consumer groups and markets, was also reached by Ofcom's TSR. It set out a number of options for further action in relation to reducing search costs:
- Comparative advertising. Ofcom has sought advice from the Committee of Advertising Practice (CAP) about price comparisons in non-broadcast advertising. Ofcom understands CAP is likely to clarify existing guidance on this and Ofcom and CAP will continue to liaise.
  - Bill formats. Two recent sources of research, one commissioned by the Ofcom Consumer Panel and one by Ofcom, show that a minority of consumers are unhappy about their bill format. The Ofcom research shows that most (89% fixed and 82% mobile) customers are satisfied with the ease of understanding their phone bill. We do not therefore propose to take this issue any further.
  - Billing practice. Ofcom took part in the elaboration of the BSI Standard "Specification for Customer Billing Practice" (BS 8463:2005) in October 2005. We do not believe it would be appropriate to require providers to model their bills on its suggested template but agree that the standard makes many thoughtful suggestions which, if taken up, would make some bills easier to understand. We therefore propose encouraging providers to make themselves aware of the advice it offers, especially on the format of the billing document and the fundamental information to be provided on the principal page of the bill.
  - Information on complaints handling processes: Independent research undertaken for the Review found a wide range of consumer preferences for obtaining information on complaints handling processes, with the main preference either the Web/internet (54%) or the provider's bill (26%). Communications providers should be sensitive to their customers' needs and ensure that everyone with a complaint is signposted appropriately. For example, reference could be made to the existence of the Complaints Code and how to obtain a copy of it on the back of the bill or on a customer contract.
  - Monitoring switching. Ofcom is in the process of publishing a consultation on migration processes in telecommunications markets. This is dealt with later in this section.
- 5.48 A further option put forward in the Telecoms Review was promoting the provision of basic information and the role of intermediaries. With this in mind, we have identified four options for the Ofcom PASS scheme:

### **Option 1 - Withdraw the PASS scheme**

- 5.49 The failure of previous regulatory initiatives suggests that suppliers may not have an incentive to provide comparable price information themselves. Ofcom concluded in the Telecoms Review that, in such circumstances, it may not be appropriate to leave the provisioning of information entirely to the market.
- 5.50 However, research suggests that awareness of the PASS scheme was 8% in 2003 and this is therefore unlikely to have an impact on the majority of consumers' behaviour. Indeed the most popular source of advice for consumers choosing a telecoms service is friends and family (40%), followed by providers or retailers (20%).
- 5.51 Nevertheless, cost continues to be the most important aspect for consumers when choosing a telecoms supplier and demand for additional information is significant, ranging from 18% (mobile) to 31% (fixed). Almost three quarters of decision makers in each market claim they would use cost comparisons when choosing a new supplier and over a third perceive the comparison process to be difficult. This suggests there is potential demand for clear, user-friendly price comparisons but also that awareness of such services could be improved.
- 5.52 However, the contribution made by the PASS scheme is not to make more information available, but to try and ensure that the information available is accurate and trustworthy. Without the PASS scheme in place, consumers might be forced to rely on less accurate or less trustworthy sources of information – particularly where intermediaries work on a commission basis and incentives to provide truly impartial advice are reduced. Where intermediaries work on a subscription basis and consumers pay an upfront fee to access the data, the case for regulatory oversight may be weaker, as the revenues of the intermediaries will not be linked directly to decisions to switch.
- 5.53 There are several independent sources of comparative price information available – mostly web sites covering fixed and broadband offers. An initial overview of the market suggests the majority of intermediaries work on a commission basis.

### **Option 2 - Maintain the scheme as it stands**

- 5.54 As outlined above, cost is the most important aspect for consumers choosing a supplier and demand for clear information is significant, and often unmet. The concept of the PASS scheme, the purpose of which is to support the provision of accurate and trustworthy comparative price information therefore continues to be relevant. Under Option 2, Ofcom would retain the scheme but not increase the resources spent administering it.
- 5.55 Yet, as set out above (Option 1), research suggests the main challenge for the PASS scheme and with sources of comparative price information may be low consumer awareness, not necessarily lack of demand. Research shows that when consumers want additional information they tend to turn to friends, family and suppliers for advice. However, as mentioned above, they may indirectly benefit from price comparison information provided on websites. Maintaining the scheme as it stands may not, therefore, solve the problem.

### **Option 3 - Retain, review and re-launch the scheme**

- 5.56 Under Option 3, Ofcom would review and re-launch the PASS scheme with a view to raising consumer awareness of the scheme and improving its overall effectiveness.



This would provide an opportunity to re-evaluate the content of the PASS Code, three years after its inception, to ensure the standards required for accreditation reflect developments in the marketplace (for example, the increase in mobile and fixed service providers) and to encourage extension of the scheme to other communications services (for example broadband and mobile). Ofcom could also use this as an opportunity to review certain aspects of the code that may not necessarily be working in the interests of consumer – for example by relaxing the current rule that intermediaries must not charge users for price comparisons.

- 5.57 In addition, re-launching the scheme could provide Ofcom with a vehicle for promoting the scheme and accredited web sites more widely to tackle the key issue of low awareness amongst consumers and to encourage more websites to seek accreditation.
- 5.58 However, it is possible that encouraging more web sites to seek accreditation may result in further consumer confusion. Despite strict accreditation standards that ensure data is accurate and up to date, other factors such as customer usage profiles may result in consumers receiving different advice from different web sites.

#### **Option 4 - Establish closer links with a single price comparison provider**

- 5.59 As noted above, there is a risk that extending the PASS scheme to include multiple accredited web sites could lead to some consumer confusion. Under Option 4, Ofcom could establish closer links with a single price comparison provider, for example by providing information on or via the Ofcom website but outsourcing the work to a third party.
- 5.60 Option 4 would offer a greater opportunity for Ofcom to concentrate its efforts on promoting a single source of information, with the potential for this to include mobile, fixed, broadband, and digital television comparisons. However, we would need to address accessibility for those consumers without internet access who are less likely to look for information. As a result, this could be a costly solution for Ofcom to pursue without the commercial revenue models used by some existing price comparison services. There may also be specific competition concerns about the way the third party provider is chosen and funded by Ofcom.

*Question 13: Which of the options on comparative price information, if any, do you favour? Are there other options Ofcom should consider?*

- 5.61 Ofcom will carry out a further consultation on the provision of price comparison information and the future of the PASS scheme later in the year. This will include a full impact assessment of the options we identify as a result of this initial consultation.
- 5.62 In addition to the options set out above, Ofcom could commission or share in the costs of an annual report on price comparisons, produced by an independent third party. This report could be published and used to generate awareness of price comparison information. Ofcom could also consider using free media more actively, to get information such as price comparisons, awareness of rights and scam alerts to uninvolved consumers.

*Question 14: What is your opinion about these ideas for generating awareness of price comparison information?*



## Comparative information on quality of service

- 5.63 Ofcom research shows that there is stated demand both from residential consumers and SMEs for quality of service information. It is also consistently mentioned by consumers as the second most important driver of switching after price.
- 5.64 As consumers spend more time and money on mobiles and the internet, there is a corresponding interest in comparable quality of service information in these markets (44% and 58% respectively). Interest in the same information for fixed voice services is lower (33%). This may reflect some decline in consumer interest in fixed line services but it is worth noting that there is evidence of a slight upturn, coinciding with the uptake of CPS and WLR services, as well as more bundling of home communications services.
- 5.65 Interest in aspects of service varies by market. Mobile customers are interested in coverage and billing accuracy comparisons and internet customers indicate demand for comparisons on available services, speeds and coverage. Broadcasting customers are most likely to use information comparing channel packages and UK coverage of suppliers. There is consistent demand for customer satisfaction information across all markets and, to a lesser extent, information on levels of customer complaints.
- 5.66 Compared to consumers, SMEs are more interested in quality of service comparisons, for both fixed (74%), mobile (82%) and internet (87%).

## Ofcom's approach

- 5.67 In a competitive market there are clear incentives for providers with a high quality of service to let consumers know about it. There is little economic incentive for those providers offering a low quality of service to produce timely and accessible comparable quality of service QoS information. If such information is not widely available, then consumer awareness of its benefits is likely to be understated.
- 5.68 Nevertheless, we can conclude from our research that quality of service is an important driver for switching across all markets for some consumers. We know, for example, that it is particularly important to younger, high income and high spending consumers who find supplier comparisons difficult due to insufficient information. These consumers are important in terms of promoting competition because they are the most likely to shop around for the best deal and are the main drivers of change in the market. The behaviour of these consumers could benefit all consumers by encouraging suppliers to improve QoS. In this context, QoS is an important building block of consumer confidence in the switching process.
- 5.69 There is also some evidence from other areas of our work that lack of QoS data has the potential to cause some harm to other types of consumers. For example, we have complaints data from the OCC which show that a significant number of consumers complain about service levels, indicating that consumers may not receive the levels of service they were expecting from their provider. We also anticipate that QoS will become a particular issue in the transition to next generation networks. It will therefore be important that this area is carefully monitored.
- 5.70 An assessment of the availability of QoS indicators suggests there is limited market provision of this type of information. It is often based on qualitative customer feedback and it is not always clear to the consumer whether a claim has been independently verified.

- 5.71 Therefore, in line with our regulatory principles, Ofcom has encouraged the market to provide information on quality of service indicators through an industry-led approach in which network operators and service providers define and manage the scheme and collectively publish indicators for use by consumers. Our aim is to ensure that information provided for consumers is objective, reliable, timely and up-to-date.
- 5.72 We are currently pursuing two initiatives – for fixed voice and mobile voice. Ofcom has issued a direction requiring certain fixed voice service providers to publish objective and comparable QoS indicators. The mobile providers, although not directed to do so, have agreed to self-provide independent, comparable QoS information. Both the fixed and mobile initiatives are wholly financed by industry with Ofcom acting as a facilitator.
- 5.73 The Direction on fixed voice requires service providers to publish comparable, adequate and up-to-date QoS information for end users. Indicators draw on the ETSI Guide 201 769 and cover supply time for initial connection, fault rates and repair time, bill correctness complaints and resolution times for end users' complaints.
- 5.74 For the scheme for mobile QoS, industry has developed a technical specification for an independent survey to measure voice call success rates for GSM networks on a six monthly basis. Four of the mobile network operators – Orange, O2, T-mobile and Vodafone – will undertake the initial surveys. The results will be published in map format as an interactive, web-based publication. This will enable consumers to compare performance by area and by network operator.
- 5.75 Both schemes aim to provide QoS information which is updated on a regular basis. The frequency of these updates lends itself to web-based publication where consumers can be assured that the information is current and can use tools to compare service levels between service providers or, as in the case of mobile QoS, compare performance by geographic area.
- 5.76 The first results of both the fixed and mobile QoS information are scheduled for publication in July 2006. User testing on the accessibility and user-friendliness of the two websites will be an integral part of the development of this service. Both sites will have a user feedback facility.
- 5.77 In order to provide the maximum benefit to consumers, the QoS information needs to keep pace with changing technological developments. Ofcom intends to undertake reviews of both schemes by the end of 2006, following publication of the first set of results. The review will be based on end user feedback (including the usefulness of the chosen indicators), levels of use (segmented by consumer group where possible) and levels of participation in the scheme. In the case of fixed providers, this may include enforcement action where service providers covered by the Direction are not participating and are therefore in breach.
- 5.78 Although the website for both schemes will be accessible for users with special needs (for example, partially sighted consumers), we realise that this approach carries the risk of excluding some consumers (both residential and SMEs) such as those without access to the internet. We anticipate that retailers will make use of the site in advising customers and make up-to-date print-outs available at the point of sale. This will improve availability of the service to a wider range of consumers. We will also be including an assessment of accessibility as part of the wider review in 2006.

- 5.79 We consider that there may be scope to expand the scheme to internet services, including broadband. Research carried out for the TSR shows that, as consumers spend more time and money on internet services, there is a corresponding level of interest in QoS information. We also know that consumers will spend comparatively more time searching for an alternative broadband supplier than for other services such as fixed voice (an average of 2 hours compared to 30 minutes) and that consumers value QoS information for internet services more than for any other communications service.
- 5.80 Current research shows that consumers also value basic information relating to price, service availability and speeds for internet services. However, this information is widely available in the market from many sources including consumer press and specialist magazines. To a lesser extent there is demand for UK coverage/availability of ISPs and, consistent with the other markets, some demand for information comparing customer satisfaction levels and billing accuracy. The research does not, however, indicate whether there are any additional quality of service indicators (other than fault repair times, which reported low demand in comparison to other aspects) which consumers value in this market. This would require additional research.
- 5.81 Similarly, there may be scope to expand the scheme to broadcasting services, for example to address demonstrated demand for comparison information from providers about channel packages. However, there is no evidence at this stage to suggest that the market is not meeting this demand. Additional research would be required before adopting this approach. We are continuing to monitor this area.

### Proposed approach

- 5.82 The two schemes are both well advanced in their development. We will continue to work closely with operators and service providers to facilitate the preliminary launch and the review process.
- 5.83 Ofcom will continue to monitor consumer attitudes and behaviour with respect to QoS information and switching. This will include an assessment of the impact of the information which the industry will provide and how it is used and valued by residential and SME consumers. We will also monitor how the needs of vulnerable consumers are met by the two schemes.

*Question 15: Do you agree with our proposed approach regarding the Quality of Service initiatives?*

### Easy switching processes



- 5.84 Awareness of alternative suppliers and services, and access to comparable information are preconditions for switching. The final stage of consumer empowerment is therefore awareness of and access to switching processes.

## Who searches and who switches?

5.85 Ofcom research estimates that for residential customers:

- 39% have ever switched their fixed line and/or call provider;
- 37% have ever switched their mobile network;
- 27% have ever switched their ISP; and
- 12% have ever changed digital television platform.

5.86 For SMEs, these percentages are higher for fixed and mobile (40% and 46%) but slightly lower for ISPs (27%).

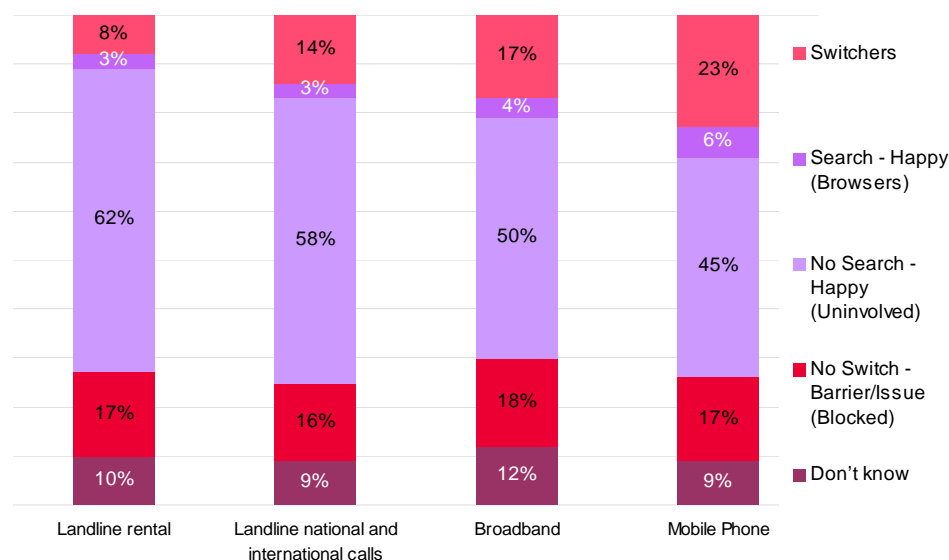
5.87 Ofcom's TSR reported that switching activity in telecoms is primarily driven by the two most technology-orientated groups - 'Leading edge' and 'Fully connected' consumers. Most consumers who search and switch indicate better prices to be the main reason for switching (64%-82%). Better service and quality are mentioned as the second most important reason and being fed up with their previous supplier comes third - except for mobile consumers who state buying a new handset as the third reason to switch supplier.

5.88 One of the areas identified by Ofcom in the TSR for further investigation was the research undertaken by the ESRC Centre for Competition Policy (CPP) at the University of East Anglia into consumer search and switching behaviour. This research looks at what factors affect switching behaviour and gives additional insight into consumers required and perceived maximum savings. It shows a lower proportion of 'switchers' than the Ofcom research set out above, largely because it includes only those consumers who have switched provider in the last three years<sup>50</sup>.

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<sup>50</sup> Data focussed on switching while remaining at the same address which may also have limited the levels of switching reported in the mobile market.

**Figure 14: Proportion of consumers that switched, or calculated potential savings by switching<sup>51</sup>**



5.89 As illustrated in figure 14, the CPP survey shows that the majority of consumers have not switched provider and in fact have not even considered doing so. Non-switchers fall into three key groups:

5.90 **Browsers.** A relatively small number of consumers (between 3% and 6%) who say they are happy with their service, have searched for cheaper alternatives but decided not to switch.

5.91 **Uninvolved.** The largest segment of consumers within each of the telecoms markets (between 45% and 62%). These consumers say they have never tried to calculate potential savings ('search'), as they are happy with their service. This group has been classified as happy but 'uninvolved'.

5.92 **Blocked.** Just under a fifth of consumers in each telecoms market (between 16% and 18%) say they have been prevented from switching provider for reasons that may be of concern to Ofcom and some of which might be addressed through the provision of additional information:

- 'don't know where to find information'
- 'no or unclear information'
- 'tied to fixed length contract'
- 'switching would be difficult after search'
- 'not enough time'

5.93 However, we do not consider there is a strong case for an Ofcom initiative to improve the information to 'blocked' consumers. This is because these consumers tend not to

<sup>51</sup> 1404 landline decision-makers, 1307 landline calls decision-makers, 1551 mobile decision-makers, 567 broadband decision-makers, survey conducted by MORI for CCP, Q2 2005

be members of vulnerable groups. Instead, they are generally aged between 25-34, from social class C1 and in full time employment. Further analysis of this group is limited by sample size.

### Why don't some consumers search and switch?

5.94 There are various reasons why consumers may not search for alternatives offers or switch provider to a get a good or better deal. The main reason given for not switching telecoms provider is the perceived lack of better offers (37-58%). Among the other reasons mentioned are current suppliers making better offers (mobile), difficulty in making comparisons (broadband), perceived reliability (fixed calls) and perceived time it takes to switch (fixed rental).

5.95 While some of these reasons may be rational, Ofcom would be concerned if consumers decided not to switch because they:

- have difficulty making comparisons;
- overestimate the costs of switching; or
- underestimate the benefits of switching.

5.96 Access to comparative information on services is discussed above. The rest of this section considers consumers' perceptions of the costs and benefits of switching and their requirements when doing so.

### Costs of switching

5.97 One reason why some consumers decide not to, or feel unable to switch could be that the perceived or actual time it takes to search for alternative offers and switch provider exceeds the time they are willing or able to spend. Figure 15 gives an overview of actual and perceived search and switch times in hours, based on median scores.

**Figure 15: Comparison of actual and perceived search and switch times according to switching behaviour based on median scores<sup>52</sup>**

	Adults that searched and switched				Switchers	Adults that searched, but did not switch		Adults that did not search, or switch	
	Actual time spent searching for savings versus expectation					Perceptions of search and switching time			
	Actual time searching	Less than expected	As expected	More than expected	Actual time to switch	Time spent searching	Perceived switching time	Perceived search time	Perceived switching time
Mobile	2	13%	70%	14%	0.5	0.5	0.5	2	0.5
*Landline Rental	0.5	21%	60%	16%	0.5	0.5	0.5	2	0.5
*Landline calls	0.5	15%	70%	10%	0.5	0.5	0.5	2	0.5
*Broadband	2	14%	66%	17%	0.5	0.5	0.5	2	0.5

\* some base sizes are less than 100 so apply caution to these results and treat as indicative only

5.98 This research shows that the amount of time consumers actually spend searching for information is around 30 minutes, rising to an average of 2 hours for broadband and mobile. From this table it can be seen that the differences between those who search and those that do not - in terms of actual and perceived time spent searching - are generally small. However perceptions do differ from actual experience in two areas:

- People who do not search for information tend to overestimate the time it takes to search for fixed telephone offers (2 hours compared to 30 minutes). This misperception might deter some consumers from searching and switching; and
- People who search but do not switch may underestimate the time it takes to search for information on alternative broadband and mobile offers. It follows that these people may 'give up' before they have found sufficient information to enable them to switch. Alternatively, they may discover they are still within a minimum contract period and so stop searching.

5.99 Switching is perceived to take around 30 minutes of their personal time and this perception corresponds with the actual experience of switchers. This suggests that consumers have a realistic perception of how long it would take them to switch supplier and that no action by Ofcom is required.

5.100 However, Ofcom research suggests that while the majority of consumers say switching is easy, a significantly higher minority say switching ISPs was difficult compared to switching fixed or mobile supplier - with 16% of consumers who have switched ISP describing the process as 'difficult'. This compares to 4% and 5% in the fixed and mobile markets respectively. In addition, there is increased uncertainty

<sup>52</sup> Varying base sizes depending on sample and market, these are detailed in full in Annex 5

amongst non-switchers with around a 20% of this group unsure how easy or difficult it would be to switch.

- 5.101 At about the same time as the current consultation document, Ofcom expects to publish a consultation on Migrations, Switching and Mis-selling. This consultation is exploring current industry processes that enable consumers to switch between providers to help determine whether switching processes are unnecessarily complex. Ofcom intends to pursue an approach to switching which is consistent with its regulatory principles and its overall approach to consumer information – evidence-based and underpinned by a bias against intervention.

*Question 16: Do you agree with our proposed approach regarding switching processes?*

### Benefits of switching

- 5.102 A second reason why some consumers decide not to, or feel unable to switch could be that the perceived or actual level of savings available is not enough. The table below gives an overview of monthly potential savings consumers are looking for when searching for alternative suppliers and the maximum perceived savings when looking for alternatives, based on median scores.

**Figure 16: Estimated Savings, required savings to search, and average monthly spend<sup>53</sup>**

Median Score (£)	Mobile Phone	Landline Rental	Landline national and International calls	Broadband
How much potential savings pm would tempt you to search for a new supplier?	£10	£6	£5	£5
How much is the most you could save per month from shopping about?	£5	£5	£5	£5
Approximately, how much do you pay on average?	£20	£15	£10	£18

- 5.103 This research suggests that the level of perceived savings is generally lower than the amounts that consumers say they would need in order to switch. However, it should be noted that savings are only one reason consumers might switch supplier. Previous research suggested that cost is generally considered alongside other aspects of service.

- 5.104 However, it may be that actual savings are in fact higher than perceived savings and consumers are therefore underestimating the savings available to them. uSwitch estimates that customers switching telephone provider via its website save an average of £120 a year on their fixed line calls – with 20% saving more than £170. While consumers using the uSwitch web site to switch are unlikely to be

<sup>53</sup> Base: 1404 landline decision-makers, 1307 landline calls decision-makers, 1551 mobile decision-makers, 567 broadband decision-makers, survey conducted by MORI for CCP, Q2 2005



representative of the UK population as a whole (they are likely to be higher spenders) this suggests that some consumers may be able to save an average of £10 (rising to £14) on their monthly telephone bill.

- 5.105 Consequently, uSwitch's data suggests that consumers may be underestimating the benefits of switching and that actual savings are equal to – or potentially higher than – the amounts that would make consumers switch.

### **'Uninvolved consumers'**

*Who are they?*

- 5.106 Where we have identified reasons for not switching that might be of concern to Ofcom (for example consumers overestimating the time it takes to search for alternative fixed telephone offers) there may be a case for targeting certain groups of consumers with timely, objective and reliable information. In line with our approach to consumer information, we believe that improving information flows between suppliers and consumers is best left to the market. However, where the market does not deliver and this clearly leads to consumer harm, there may be a case for regulatory intervention.
- 5.107 Ofcom continues to have concerns over the position of 'uninvolved' consumers who do not express dissatisfaction with their situation but who nevertheless may be disadvantaged in terms of their ability to participate in the market. As set out in the TSR, research indicates the 'uninvolved' share a range of common characteristics which could justify targeted action:
- they tend to be older – people in the age group of 65 years and older make up a large share of this group;
  - they tend to be on lower incomes - in general the proportion in social grades D and E is much higher, and likely to have a lower income;
  - they are less likely to have internet access at home - in the age group of 65+, only 27% have home internet access and for the D and E social grades, this is 33%; and
  - they tend to have a lower than average understanding of new technology terms, a lower than average awareness of alternative suppliers and are often lacking in the knowledge of their rights.

### **What could we do?**

- 5.108 In order to progress our approach, we will carry out further research into the decision making process of different groups of consumers to assess:
- consumers' use of information sources and preferences alongside their switching behaviour to identify whether and how consumers use these when making choices;
  - consumer opinion on current information offerings being used e.g. use of intermediaries, supplier websites, internet generally, specialist publications;
  - the importance of savings to consumers in switching supplier, what trade-offs are made when considering whether to switch, and what are the key drivers in consumers' decisions on whether to search or switch; and

- whether mis-perceptions, low awareness of achievable savings or the ease of the switching process impacts consumers' switching decisions.

5.109 This research is also planned to assess in more detail what, if anything, would encourage 'uninvolved' groups to participate in telecoms markets. We will consider whether regulatory intervention is warranted, once the results of this research are available.

## Annex 1

# Responding to this consultation

## How to respond

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 19 April 2006**.

Ofcom strongly prefers to receive responses as email attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet, among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

Please send your response to [conpolconsult@ofcom.org.uk](mailto:conpolconsult@ofcom.org.uk).

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Claudio Pollack  
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Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7783 4139  
Fax: 020 7981 3333

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

If you have any want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Claudio Pollack on 020 7783 4139.

## Confidentiality

Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt (if respondents confirm on their response cover sheet that this is acceptable).

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose any information it receives where this is required to carry out its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at: [www.ofcom.org.uk/about\\_ofcom/gov\\_accountability/disclaimer](http://www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer).

## **Next steps**

Following the end of the consultation period, Ofcom intends to publish a statement around the end of June 2006.

Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

## **Ofcom's consultation processes**

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 2) which it seeks to follow, including on the length of consultations.

If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash, Director for Scotland, who is Ofcom's Consultation Champion:

Vicki Nash  
Ofcom (Scotland)  
Sutherland House  
149 St Vincent Street  
Glasgow G2 5NW  
Tel: 0141 229 7401  
Fax: 0141 229 7433  
E-mail: [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

### General:

Question 1: Do you agree with the proposed distinction between citizen and consumer interests?

Question 2: Do you agree with Ofcom's position on vulnerable consumers?

Question 3: Do you agree with the proposed high level objectives for consumer policy?

Question 4: Do you agree that the proposed indicators provide an appropriate basis for monitoring consumer interests? Are there any other indicators which should be used?

Question 5: Do you agree that Ofcom should publish an Annual Report on the Consumer Interest?

### Consumer Protection:

Question 6: Do you agree with the characteristics identified of effective consumer protection?

Question 7: Do you agree with the assessment and priorities for rights and regulations?

Question 8: Do you agree with the assessment and priorities regarding consumers' awareness?

Question 9: Do you agree with the assessment and priorities regarding complaints handling and redress?

Question 10: Do you agree with the assessment and priorities regarding monitoring and enforcement?

### Consumer Empowerment:

Question 11: Do you agree with Ofcom's approach to the provision of consumer information?

Question 12: Do you agree with Ofcom's conclusion on consumer awareness of suppliers and services?

Question 13: Which of the options on comparative price information, if any, do you favour? Are there other options Ofcom should consider?

Question 14: What is your opinion about the ideas for generating awareness of price comparison information?

Question 15: Do you agree with our proposed approach regarding the Quality of Service initiatives?

Question 16: Do you agree with our proposed regarding switching processes?



## **Annex 5**

# **Overview of Consumer market research**

**This Annex is available to download at: [www.ofcom.org.uk](http://www.ofcom.org.uk) or as a separate publication - Of 290a**

## Annex 6

# Overview of SME market research

This Annex is available to download at: [www.ofcom.org.uk](http://www.ofcom.org.uk) or as a separate publication - Of 290a

## Annex 7

## Monitoring consumer interests

A7.1 The indicators we propose to monitor on an annual basis are linked to the three main areas of consumer policy; competition policy, consumer protection and consumer empowerment. A substantial part of this information is already available, based on Ofcom's and Ofcom Consumer Panel's market research. Where available we have put in the data.

A7.2 Regarding competition policy, we suggest including the following list of indicators:

Competition Policy	Landline/fixed services	Mobile	Internet total	Broadband	Digital TV	Digital Radio
Service availability	Data being collected by Ofcom for publication within Audit of Nations and Regions					
Household ownership of services (Q2 2005 – Ofcom tracker)	91%	89% (82% of adults)	56%	35% (52% of internet homes)	64%	25% (aware they have access at home)
Pricing (based on price index – Q1 2005)	-35 (calls)	-9 (prepay) -4 (contract)	No data currently available		No data currently available	n/a
Awareness of general choice of suppliers (prompted) (Q2 2005 – UEA data)	86% - rental 70% - calls	86%	No data currently available	92%	99%	n/a
Satisfaction with overall service (Q1 and Q2 2005 – Ofcom tracker)	88%	92%	90%	92%	86%	93% (with content)

A7.3 For consumer protection, we suggest inclusion of the following indicators:

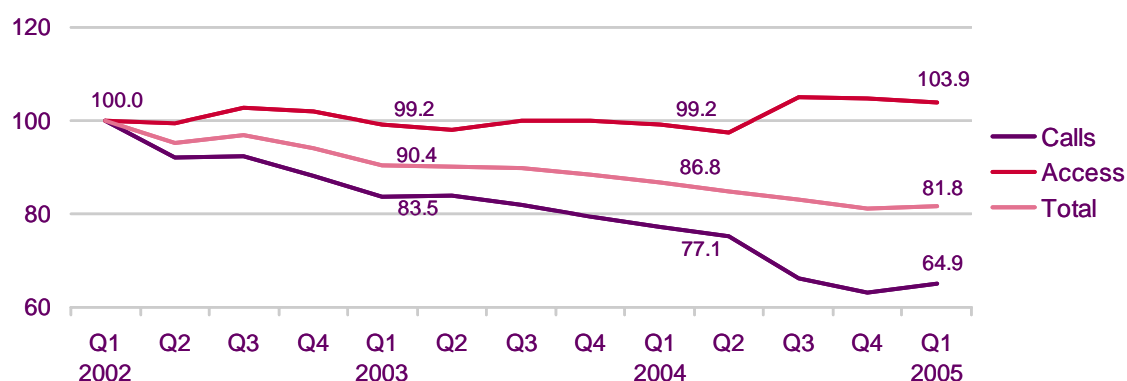
Protection	Landline/fixed services	Mobile	Internet total	Digital TV	Digital Radio
Number of monthly complaints received by Ofcom	Updated from OCC data	Updated from OCC data	Updated from OCC data	Updated from OCC data	Updated from OCC data
Awareness of right to receive a Code Of Practice (Q2 2005)	36%			n/a	n/a
Awareness of complaints procedures (Q3 2005)	13% (rising to 29% that followed a 'reasonable process' – e.g. initially contacted supplier and escalated to plausible body)			4% (non BBC TV Programme)	6% (rising to 8% following reasonable process) (Radio programme only)
Satisfaction with Ofcom (Q4-Q1 2005)	64% overall satisfaction amongst customers that contacted OCC				n/a

#### A7.4 For consumer empowerment we are considering including the following indicators:

Empowerment	Landline/fixed services	Mobile	Internet total	Broadband	Digital TV	Digital Radio
Awareness of technology terms (OCP 2005/06)	n/a (VoIP data will be available)	n/a (3G data will be available)	n/a (VoIP data will be available)	Data being collected via Ofcom Consumer Panel tracker	Data being collected via Ofcom Consumer Panel tracker	Data being collected via Ofcom Consumer Panel tracker
Understanding of technology (OCP 2005/06)	n/a (VoIP data will be available)	n/a (3G data will be available)	n/a (VoIP data will be available)	Data being collected via Ofcom Consumer Panel tracker	Data being collected via Ofcom Consumer Panel tracker	Data being collected via Ofcom Consumer Panel tracker
Keeping informed about developments (Q1 2005 – Ofcom tracker)	19%	33%	28%		27%	n/a
Switching (% ever) (Q2 2005 – Ofcom tracker and ad hoc study)	39% (includes indirect access suppliers)	37%	27%	17%	12%	n/a
Perceptions of ease of switching (Q1 and Q2 2005 – Ofcom tracker)	71%	81%	71%		No data currently available	n/a
Ease of making cost comparisons (% difficult) – (Q3 2004)	42%	38%	37%		No data currently available	n/a
Ease of making quality of service comparisons (Ofcom tracker)	Data being collected via Ofcom tracker	Data being collected via Ofcom tracker	Data being collected via Ofcom tracker		Data being collected via Ofcom tracker	Data being collected via Ofcom tracker

### UK residential fixed voice price trends

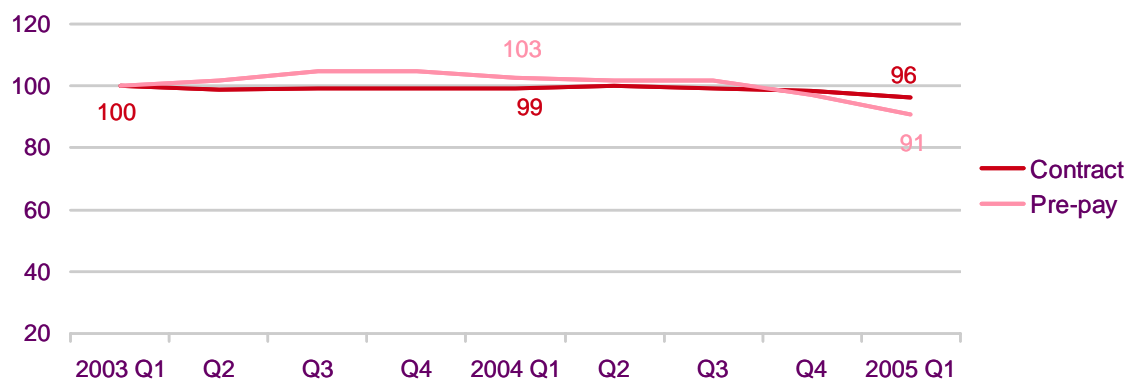
Index 2001 Q3=100



Source: Ofcom / operators

## Average UK mobile unit revenue indices

Index 2003 Q1=100



Source: Ofcom / operators

## Annex 8

# Case studies on consumer protection

## Case study 1: Silent or abandoned calls

- A8.1 Most silent calls occur when automated calling systems (commonly referred to as 'predictive diallers') used by call centres for telemarketing, market research, debt collection and other purposes, generate more calls than the available call centre agents can deal with. When the person dialled answers the telephone, there is no agent available, resulting in silence on the line. These abandoned calls can cause significant annoyance, inconvenience and anxiety.
- A8.2 During the 1980's most outbound work in call centres was carried out manually. However, during the late 1980's and early 1990's there was a wider adoption of technology by call centres which linked computer and telephone systems. New technologies such as predictive diallers fuelled the rapid growth in call volumes and gave rise to the 'silent call' phenomenon.
- A8.3 The absolute volume of silent calls is very hard to quantify, but customer complaints offer a useful measure of the level of public concern. Ofcom became aware in 2003 of the escalating problem of the number of complaints about silent calls being received by the Nuisance Call Bureaux (NCB). Reports at the time indicated that the NCB received about 6,000 complaints a month. Over the last two years there has been growing public concern about the distress caused by silent calls. BT reported in June 2005 that it handled about 160,000 complaints a month and now currently receives about 80,000 complaints a month about silent calls.
- A8.4 During 2004 and early 2005 Ofcom:
- liaised with the Direct Marketing Association (DMA) and its members to reduce the number of silent calls;
  - engaged with the British Bankers Association and the Credit Services Association to raise their members' awareness of the silent calls problem;
  - encouraged the DMA to bring predictive dialler technology suppliers into the campaign against silent calls; and
  - encouraged BT and other communications providers to share information and educate their customers who are discovered to have made silent calls.
- A8.5 Most of Ofcom's work against silent calls was less visible and did not have the desired effect. Ofcom therefore started a 'persistent misuse' investigation under the Communications Act 2003 into seven companies. The investigation was completed on 31 October 2005 with notifications being issued to four companies and written undertakings provided by one company. Another company stopped accepting contracts to send unsolicited fax communications. Another company's conduct did not constitute persistent misuse.
- A8.6 Ofcom is taking action in three areas to combat the problem of silent calls:

- Consulting on amendments to its statement of policy on the persistent misuse of a network or service<sup>54</sup>, which set out a series of requirements for organisations using automated calling systems;
- Taking firm and decisive enforcement action where appropriate, to ensure compliance with these new requirements;
- Engaging with stakeholders and monitoring and reviewing the impact of these measures.

A8.7 Ofcom has asked the Government to increase the maximum penalty that Ofcom can impose from £5,000 to £50,000 for each breach of the rules. DTI are currently consulting on this.

A8.8 Lessons learned:

- The time it took between the problem emerging and clarifying the policy and taking enforcement action was about two years;
- Originally, a self-regulatory approach was tried to solve the problem, but this did not have the desired impact – industry faced strong incentives to bend the rules;
- A lack of enforcement action by Ofcom and the assumption by industry that the DMA Code of Practice provided a 'safe harbour' led to considerable uncertainty;
- It was not always clear to consumers whom to address their complaint to, Ofcom or the Office of the Information Commissioner.

## Case study 2: Mis-selling of fixed-line telecoms services

A8.9 The development of competition for fixed-line telecoms services, notably through Carrier Pre-Selection (CPS) and Wholesale Line Rental ('WLR'), led to much greater use of direct selling techniques, such as via the doorstep, by telephone and in public places such as supermarkets. This was widely seen as positive and a development which could make a significant contribution to the development of competition in the telecoms sector. However, the experience of the energy sector and, in particular, that such selling techniques could lead to irresponsible sales and marketing activity (i.e. mis-selling/slamming) if left uncontrolled, showed that consumers may need protection from such adverse consequences of competition, should they arise.

A8.10 The term 'mis-selling' covers a range of sales and marketing activities that can work against the interests of both consumers and competition and undermine confidence in the industry as a whole. It can include:

- the provision of false and/or misleading information (for example, about potential savings or promising offers or gifts which do not actually exist);
- applying unacceptable pressure to a consumer to change providers, such as refusing to leave until the customer signs, or using threatening or otherwise intimidating behaviour; and
- 'slamming', an extreme form of mis-selling, where customers are simply switched from one company to another without their knowledge and consent.

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<sup>54</sup> Insert reference

A8.11 The potential for mis-selling was originally considered back in 2002 as part of the establishment of a fit-for-purpose wholesale line rental product which Oftel, at the time, considered would result in significant changes to the way in which services would be marketed and sold to consumers. The regulator set up a Consumer Issues Task Group, comprising representatives from consumer groups and industry, to consider the implications for consumers arising from the development of WLR, in particular, and to consider how best to prevent mis-selling.

A8.12 It was agreed that the mechanism for preventing mis-selling and, more specifically, slamming, for CPS and WLR, should be as follows:

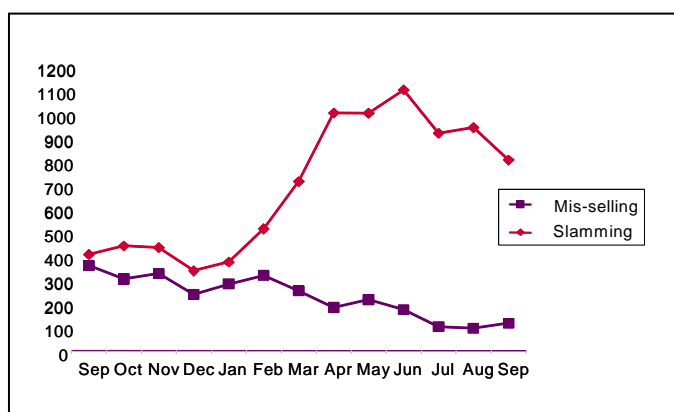
a 10 working-day switchover period before a customer's order can be activated, with mandatory 'notification of transfer' letters to be sent by both the gaining and losing provider during this period to all consumers wishing to transfer;  
voluntary guidelines for sales and marketing codes of practice, ensuring fair and appropriate sales and marketing activity, and;  
a consumer guide which aimed to ensure that consumers were adequately informed about the nature of these services.

A8.13 As the graph below shows, there was growing evidence by early 2004 that, although the overall level of complaints about mis-selling was declining, the problem of slamming was becoming more serious, and the voluntary nature of the sales and marketing guidelines was not delivering the required benefits. Figure A1 shows the sharp increase in the number of complaints about slamming logged at Ofcom's Contact Centre during the early months of 2004.

A8.14 As a consequence, Ofcom issued a consultation document in April 2004 on whether existing safeguards provided sufficient consumer protection from slamming and mis-selling. In the light of responses received, Ofcom concluded that the balance of evidence supported the position that the current safeguards did not provide sufficient consumer protection from mis-selling of fixed-line telecoms services, and that additional safeguards were necessary. Accordingly, in November 2004, Ofcom published a statement and further consultation document which proposed modifying General Condition 14. The effect of the proposed modification was to impose requirements upon all providers engaged in sales and marketing of fixed-line telecoms services to establish, and comply with, sales and marketing codes of practice, consistent with published guidelines.



**Figure A1: Development of mis-selling and slamming complaints to Ofcom OCC**



A8.15 This measure means that codes of practice for sales and marketing are enforceable by Ofcom. Ofcom has the power to take enforcement action against those providers who breach the provisions of their code, including, ultimately, imposing a financial penalty on the relevant provider. In addition, Ofcom's enforcement powers include the ability to secure written undertakings from companies about their sales and marketing practices.

A8.16 The new rules came into force on 26 May 2005. The focus therefore has now shifted from policy to enforcement. Ofcom opened an own-initiative investigation to monitor compliance on 27 May 2005. As part of its enforcement programme, Ofcom continues to actively monitor complaint levels using two different approaches: the number of complaints coming into the OCC, and the number of transfers cancelled by BT on the request of end-users who are alleging slamming. A number of enforcement actions are already underway.

A8.17 Lessons learned:

- The time it took between the problem emerging and the introduction of a mandatory Code of Practice was 18 months;
- The introduction of a voluntary Code of Practice did not deliver the required benefits;
- There was no clear path for consumers to obtain redress.

### **Case study 3: Rogue diallers**

A8.18 In 2004 there was a great deal of consumer concern over rogue internet diallers, which are a type of software which may be downloaded inadvertently by internet subscribers, and which then generate calls to premium rate numbers.

A8.19 Between August 2003 and July 2004, ICSTIS received around 60,000 complaints, of which approximately two-thirds were related to internet diallers. ICSTIS was overwhelmed by the volume of calls coming into its helpline and by the number of complaints being received.

A8.20 In response, ICSTIS upgraded its helpline facilities and its website. It also introduced a prior permission scheme for internet diallers, aimed at reducing the incidence of

rogue diallers. These measures went a considerable way towards managing the impact of rogue diallers but did not provide a comprehensive solution, for example because they did not solve the problem of rogue diallers on numbers outside the 09 range, or of those operating from foreign locations.

- A8.21 The ICSTIS code of practice applies to any company offering premium rate services in the UK. These companies are responsible for ensuring that the content and promotion of their premium rate services comply with the code. ICSTIS has a range of sanctions it can impose if it finds that the code has been breached. The code also includes general requirements for network providers to assist ICSTIS in its regulation of companies offering premium rate services.
- A8.22 From January to September 2004, ICSTIS imposed 95 fines totalling £2.03m on 91 service providers, over half of which were unpaid as at 17 September 2004. Of the 17 fines exceeding £50,000, 14 were imposed on overseas service providers. There have been very few cases in which the customers affected will have received a refund, let alone compensation. Although ICSTIS does award redress against offending service providers in some cases, such awards are not legally enforceable.
- A8.23 At the request of DTI, Ofcom carried out a review of the regulation of premium rate services in the UK. The report, published in December 2004, identified a number of problems with the current arrangements, and set out various recommendations designed to improve the effectiveness of the regulation of premium rate services. The recommendations included, among others:
- Greater traffic monitoring and information sharing by telecoms companies;
  - A requirement that no monies should be paid out to service providers for at least 30 days after calls have been made by consumers;
  - Increasing the maximum fine which can be imposed by ICSTIS; and
  - Improved provision for consumer refunds.
- A8.24 Ofcom, together with DTI and ICSTIS, are implementing the recommendations as quickly as possible. In addition to this, Ofcom has recently published a Consultation Document on rogue internet diallers with a proposal to modify the PRS-condition<sup>55</sup>. The proposal would extend ICSTIS's remit to include all diallers, regardless of the numbers on which they are provided.
- A8.25 Lessons learned:
- Requirements to consult for prescribed time periods at national and European level can hinder enforcement agencies in moving more quickly to change regulations;
  - By introducing a dialler registration scheme and implementing the recommendations of Ofcom's review, the problem was successfully tackled on the 09 range, but overall this took some two years;
  - The self-regulatory framework for did not provide sufficient incentive for compliance, as sanctions imposed by ICSTIS on Service Providers are not legally enforceable and Service Providers are often located abroad.

<sup>55</sup> <http://www.ofcom.org.uk/consult/condocs/prsconditions/prs.pdf>

- The ease with which Service Providers can create and liquidate corporate entities, combined with the ease with numbers and monies can be extracted from networks, makes the speed of enforcement critical to success.
- The technical nature of the problem made it very difficult for consumers to solve it themselves.
- The problem has recently re-emerged on 087 numbers.

## Annex 9

# Ofcom Consumer Panel advice and Ofcom Board response

A9.1 This Annex sets out the Panel's advice on the Consumer Policy Consultation document to the Ofcom Board. The Ofcom Board replied to the Panel's advice in the form of a letter. This letter has been included in this annex as well.

A9.2 Please note that the Panel has provided advice on an earlier version of the document. Its advice therefore is not always directly related to this version of the Consultation document.

## Overview of issues outlined by the Ofcom Consumer Panel

A9.3 The Panel are concerned with four key areas raised by the Consumer Policy Consultation Document:

- The distinction between the consumer and the citizen;
- Information provision to consumers;
- Proposals on the PASS scheme; and
- The proposals for monitoring and enforcement.

## The distinction between consumer and citizen interest

A9.4 The Panel recognises that the distinction between citizen and consumer interests is an issue of political significance. It is also important for moving Ofcom's regulatory agenda into areas where price competition alone cannot deliver, both now and in the future. However, the Panel has come to the view that the distinction is of relatively small significance when determining appropriate regulatory interventions – it is not clear to us how or when this distinction would lead to different regulatory responses. So, while recognising why Ofcom have spent time developing the distinction, the Panel believes that we should simply note the political significance of this issue and move on. Most of what the Panel has been concerned with is in fact in the "citizen" space and our primary concern will be to ensure that the work of "consumer policy" continues to give full weight to the needs of vulnerable people however they are defined.

## Information provision to consumers

A9.5 The Panel found the criteria for deciding if regulatory intervention on information provision was required, helpful. The Panel has developed similar criteria. These are:

- How do people absorb, retain and act on information about price and non-price characteristics of products in this marketplace?
- What evidence is there that consumers are unaware or confused about costs and /or what they are getting?
- What is the resulting detriment?
- What needs to be done and by whom?

- A9.6 It is important that Ofcom develops its policy on information provision from a strong evidence-base about the consumer experience, detriment and how people absorb and retain information. Together, with Ofcom, the Panel has identified a number of gaps in Ofcom's evidence base. These broadly include:
- Understanding the switching decision-making process for different consumer segments;
  - Cost awareness;
  - Preferences for and use of information; and
  - The purchasing experience.
- A9.7 The Panel welcomes Ofcom responding to these identified gaps with a commitment to further consult the Panel on the nature of the research required and a commitment to conduct it as soon as possible in order to strengthen the consumer policy review consultation.
- A9.8 Until this research has been carried out, the jury is still out on whether consumers have unmet needs for information and who should provide it. It may be that a fuller evidence base would suggest interventions other than information provision may be appropriate (e.g. unfair contract terms, misleading advertising, the duty not to trade unfairly, Competition Act). The Panel therefore advises the Ofcom Board to delay its consultation on the consumer policy review until it has this evidence base.
- A9.9 Ahead of receiving the results of the research which we understand is being commissioned by Ofcom to drill down into some of the fundamentals of how information is acquired and used in this market place, the Panel wishes to draw Ofcom's attention to some of the provisions in the legislation. Section 26 of the Communications Act 2003 clearly envisages that Ofcom will provide information to consumers. Whilst this is a permissive and not mandatory power, in setting out this power, Parliament envisaged a consumer information role for the regulator. The Panel also wish it to be brought to the Ofcom Board's attention that other communications regulators have felt it appropriate to provide a range of consumer information, notably those in Ireland, Canada and Australia.
- A9.10 Some, although not all, members of the Panel believe it important for Ofcom to provide consumer information and advice for the following reasons:
- It would be a central, easily located source for basic information, saving consumers from searching around for sites of which they have little knowledge;
  - It would be more comprehensive than other sources which concentrate on a particular segment of the market or particular services;
  - It would be trusted and reliable because they have no vested economic interest; and
  - It would enable third parties (e.g. advice sector) to help individual consumers.
- A9.11 They were keen to see the provision of the following types of information:
- The kinds of products and services available, including specialist products and services for disabled people, and an explanation of the new technologies that are emerging in terms which are clear, simple and user-friendly. But not evaluation or endorsement of specific products or services;
  - How consumers should make choices of a fixed line operator, a mobile operator, a broadband provider, a digital television provider and any

combination of these, providing advice on factors to take into account and a checklist of issues to consider (e.g. introductory only offers). This should include signposting information on accredited price comparison services (see below), quality of service information and specialist information for disabled or other vulnerable groups (e.g. to Ricability, BT's special tariffs); and

- Consumer problems (e.g. mis-selling or scams, complaints data), signposting consumers to where they can find further information on consumer rights and on what to do and who can help when they encounter problems.

A9.12 In the view of some Panel members the above information should be easy to find, easy to read and easy to understand. It should be available with off-line as well as on-line resources. A telephone advice line for advice workers could be another additional supplementary information service. Ofcom could, depending on what the research says also encourage third parties to provide a similar signposting service.

A9.13 The Panel therefore advises Ofcom to:

- Conduct the necessary research to 'fill in the gaps' on its evidence-base as soon as possible; and
- Delay the consumer policy review consultation until this research is completed and its implications for policy have been identified.

### **Proposals for the PASS-scheme**

A9.14 The Panel does not wish to make a recommendation on the options for the PASS scheme until we and Ofcom have developed a clear view on what price and non-price information consumers value and use to shape their purchasing decisions. The scope of the PASS scheme should then reflect the breadth of consumer information needs identified in the research.

A9.15 Ofcom has suggested that it could facilitate price comparisons across communications markets by requiring comparable bundles of services. The Panel would suggest such a move as it could restrict innovation. The Panel is interested in Ofcom exploring alternative comparison mechanisms that avoid this disadvantage (e.g. ratio/benchmarking resulting in a minimum annual charge to the consumer).

A9.16 The Panel therefore advises Ofcom to consult on a range of options in relation to the PASS scheme which reflect an improved understanding of what price and non-price information consumers need to aid their purchasing decisions.

### **Proposals for monitoring and enforcement**

A9.17 The Panel agrees with the points made in the document about the perceived slowness of response of Ofcom's enforcement efforts, partly arising from its reliance on co-regulatory solutions. The Panel also believes that Ofcom is now in a phase of its life when monitoring and enforcement will come more to the fore.

A9.18 The Panel therefore advises Ofcom to make a clear public statement on the following:

- Its criteria for determining what is an abusive practice that would justify regulatory intervention;
- The range of powers it has available, under its own statute or under other statutes, to tackle abusive behaviour; and

- The resources it proposes to devote to monitoring and enforcement going forward.

## Ofcom Board response to the Ofcom Consumer Panel



20 December 2005

Colette Bowe  
Chair  
Ofcom Consumer Panel

### **Ofcom Board note on Consumer Panel Advice on the Consumer Policy Review**

The Board thanks the Panel for its Advice on this important topic.

The Ofcom Board considered the Consumer Panel's Advice at its meeting on December 13<sup>th</sup>, 2005, and the key points raised were as follows.

The Board disagreed profoundly with the Panel's observations about the practical significance of the distinction between consumer and citizen interests. This distinction lies at the heart of the regulatory framework established by the Communications Act. In the Board's view, clarity over the relationship between citizen and consumer interests is essential, not only for political reasons, but also because the way in which the distinction is drawn has important implications for policy development.

The Board welcomed the Panel's advice on the need for additional research into the consumer experience, and the way in which people obtain and use information when making decisions. It was agreed that Ofcom should press ahead with further research in this area, and liaise closely with the Panel about the scope and progress of the work.

The Board gave careful consideration to the Panel's proposal that the consumer policy review consultation should be delayed until the research has been completed. The Board took the view that, on balance, it would be better to proceed with publication of the Consultation Document as planned in January 2006. It was considered important for Ofcom to set out its overall approach to consumer policy, and it was felt that this stance was unlikely to be affected by the results of the planned research. It is also likely that the results of the research will be available before publication of a Final Statement in the summer of 2006, and could be taken into account at that time. To the extent that the research findings suggest that other regulatory interventions would be appropriate, they can be taken forward at that stage, if necessary through separate consultations.

In relation to the view of some Panel members that Ofcom should provide more advice to consumers, the Board noted that the proposed development of the Consumer Advice section of the Ofcom website should make a significant contribution to that objective.

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The Board discussed the Panel's proposal to delay consultation on the PASS scheme until the results of the new research are available. The Board agreed that the research may provide additional information which will be valuable in assessing future options, and that it may not therefore be possible to reach a final conclusion on the PASS scheme until the results are available. The Board nevertheless felt that it would be useful to invite views on a range of possible options in the January Consultation Document, without expressing a preference for any one option.

The Board agreed with the Panel's view that Ofcom is now in a phase of its life when monitoring and enforcement will come more to the fore, and that it should make a clear public statement setting its commitment to effective action in these areas. The Board was not convinced that it would be helpful to publish criteria for determining whether regulatory intervention was justified, as they might serve to limit Ofcom's ability to respond effectively in a fast-changing market. It was nevertheless agreed that, through the Consultation Document and subsequent Statement, Ofcom should set out clearly how it intends to ensure that monitoring and enforcement are effective, and signal its intention to devote additional resources to these activities.

Perhaps it would be helpful for me to meet with you and the Panel in the New Year and I will ask Denise to liaise regarding dates.

*Yours ever*  


David Currie



## Annex 10

## Glossary

ADR	Alternative Dispute Resolution: Requirement on communications providers to have a method in place for resolving disputes with their customers, if their own processes fail to do so.
ASA	Advertising Standards Authority: The independent body set up by the advertising industry to police the rules laid down in the advertising codes.
BSI	British Standards Institute: National Standards Body of the UK, develops standards and standardization solutions to meet the needs of business and society.
CAP	Committee of Advertising Practice: industry body responsible for the UK's advertising Codes.
CCP	ERSC Centre for Competition Policy at the University of East Anglia.
CISAS	Communication and Internet Services Adjudication Scheme: one of the two Ofcom approved alternative dispute resolution schemes.
CMA	Communications Management Association.
Communications Act	Communications Act 2003, which came into force in July 2003.
Consumer Direct	A telephone and online consumer advice service, supported by the Department of Trade and Industry.
CP	Communications Provider.
CPS	Carrier Pre-selection: The facility offered to customers which allows them to opt for certain defined classes of call to be carried by an operator selected in advance (and having a contract with the customer) without having to dial a routing prefix, use a dialler box, or follow any other different procedure to invoke such routing.
DMA	Direct Marketing Association: UK's trade association in the marketing and communications sector.
DSO	Digital Switch Over: The process, starting in 2008 and ending in 2012, whereby TV services in the UK will go completely digital by TV region.
DTI	Department of Trade and Industry.
EA	Enterprise Act: Enterprise Act 2002 which, among other things, contains consumer protection legislation.

ECCSA	European Calling Card Services Association: Self-regulatory body established by a number of leading providers operating in the international calling card market to provide a coherent channel of communication for service providers to clients, legislative bodies and the media.
ECN	Electronic Communications Networks.
FPS	Fax Preference Service: A central opt out register whereby businesses and individuals can register their choice not to receive unsolicited sales and marketing faxes.
FSA	Financial Services Authority: Regulator of financial services in the UK.
General Conditions	Set of conditions applying to communication providers, imposing legal obligations on providers.
ICSTIS	The industry-funded regulatory body for all premium rate charged telecommunications services.
ISP	Internet Service Provider: A company that provides access to the internet.
Mis-selling and slamming	<p>Range of marketing and sales activities including:</p> <ul style="list-style-type: none"> <li>• the provision of false and/or misleading information;</li> <li>• applying unacceptable pressure to change Providers, such as refusing to leave until the customer signs, or using threatening or otherwise intimidating behaviour; and</li> <li>• 'slamming', an extreme form of mis-selling, where customers are simply switched from one company to another without their express knowledge and consent.</li> </ul>
NCC	National Consumer Council: Non-departmental public body established to safeguard the interests of consumers and to ensure that these interests are represented to, and are taken account of, by decision-makers.
OCC	Ofcom Contact Centre: Part of Ofcom dealing with complaints and enquiries about communications services.
OCP	Ofcom Consumer Panel: Organisation set up to advise Ofcom and other interested bodies about consumer issues and concerns in communications markets.
Otelo	Office of the Telecommunications Ombudsman: one of the two Ofcom approved alternative dispute resolution schemes.

PASS-scheme	Price Assurance Standard scheme: seal of approval by Ofcom for websites which compare the prices of different suppliers and provide impartial and accurate information.
PRS	Premium Rate Services: Premium Rate Services ('PRS') are services commonly providing information or entertainment via the telephone, fax, PC (e.g. Internet), mobile or interactive digital TV services charged at above ten pence per minute ('ppm').
QoS	Quality of Service.
Rogue internet diallers	A type of software which may be downloaded inadvertently by internet subscribers, and which then generates calls to premium rate numbers.
Silent calls	Silent calls generally occur when automated calling systems used by call centres generate more calls than the available call centre agents can deal with.
SMEs	Small and Medium sized enterprises.
SMP	Significant market power: An enterprise with a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers, which has been notified as such by Ofcom.
TPS	Telephone Preference Service: A central opt out register whereby businesses and individuals can register their choice not to receive unsolicited sales and marketing telephone calls.
TSR	Telecoms Strategic Review: A review designed to set out a strategic direction for Ofcom's activities in relation to telecoms.
USD	The Universal Service Directive adopted by the EU.
USO	Universal Service Obligations: The set of Universal Services that Universal Service providers are required to provide.
uSwitch	Ofcom PASS accredited provider of price comparison data for fixed telephony services.
VODA	Video On Demand Association.
VoIP	Voice over Internet Protocol.
Which?	Independent organisation that deals with consumer issues.
WLR	Wholesale Line Rental: A regulatory instrument requiring the operator of access lines to make this service available to competing providers at a wholesale price.