

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

Thursday 14 March 2019 – 13.00-16.00

Present:

Liz Leonard – Chair ACS
Carmel Teusner – ACS
David Connolly – ACS
Laura Anderson – ACS
Amanda Britain – ACS (Consumer Panel Member for Scotland)
Maggie Cunningham – ACS (Content Board Member for Scotland)
Bob Downes – Ofcom Board Member for Scotland

Lorraine King – Scottish Government (for Item 3)
Katie Pettifer - Ofcom
Glenn Preston – Ofcom
Jonathan Ruff – Ofcom
Stefan Webster – Ofcom
Diarmuid Cowan – Ofcom
Emma McFadyen – Ofcom (by VC)
Jacqui Gregory – Ofcom (for Item 8)

Action

1. Welcome and apologies

1.1 LL welcomed Lorraine King from the Scottish Government to the meeting. LL also noted this was Stefan Webster’s first, formal ACS meeting since joining the Ofcom Scotland team to lead on broadcasting issues.

No apologies were received.

2. Members’ interests

2.1 No interests were declared by members.

3. Scottish Government: Consumer Scotland presentation

3.1 Lorraine King (“LK” – Head of Consumer and Competition Policy at the Scottish Government) provided members with an overview of the proposed new Consumer Scotland body, including:

- Scottish Government’s rationale for creating the body;
- Summaries of responses received from other organisations;
- Overview of the main consumer detriment areas in Scotland.

3.2 LK suggested that stakeholders’ consultation responses were broadly supportive of the new body; although highlighted concerns about the complexity of the consumer landscape in Scotland. Trading Standards Scotland and CMA were likely to play an important role in future. The primary focus of the new body would be to take forward investigations into areas of consumer harm with the statutory backing of being the main consumer advocacy and advice body in Scotland.

3.3 There were three key areas where the new body aims to contribute:

- devolution has created a complex consumer landscape in Scotland which requires unique solutions;
- Scotland's distinctive social and economic environment leads to different outcomes for consumers compared to the rest of the UK (including substantial rural and ageing population); and
- Scotland currently lacks a strong consumer representative; no organisation exists now with the remit to drive consumer change (i.e. a dedicated consumer champion)

LK noted the expectation that the necessary legislation would be laid at the Parliament before the summer recess with the expectation the new body will be operational from Autumn 2020.

4. **Communications Consumer Panel (CCP) / Advisory Committee on Older and Disabled people (ACOD) update**

4.1 AB updated the committee on the work of the CCP and reflected on key points from a consumer focused session with stakeholders earlier in the day.

4.2 The ACS noted some of the recent publications of the CCP/ACOD, including the open consultation on the Panel's proposed work plan for 2019/20.

5. **Minutes of previous meeting of 27 November 2018 and Matters Arising**

5.1 The minutes were approved with two amendments.

GP

5.2 LL and BD reflected on having attended the launch of the new BBC Scotland channel. The ACS also noted JR's update on nuisance calls, which had seen a decline in the rate across Scotland, which was understood to relate to call blocking technology introduced by communications providers.

6. **Director's Report**

6.1 GP provided the committee with an overview of key developments in Scotland since the last meeting, including:

- Meetings with the Scottish Government on priority work areas e.g. USO/R100 interaction, 700MHz auction, Made out of London programming and Ofcom's role overseeing the application of the Access to Infrastructure Regulations.
- The establishment of the Infrastructure Commission for Scotland and its call for evidence to inform its 5 year (to be produced by end 2019) and 30 year (to be produced within 18 months) plans.
- Scottish Parliament oral and written evidence: Rural Economy and Connectivity (Annual Plan and Connected Nations) and the Culture Committee (Localness on Commercial Radio).
- Cross Party Group on Digital Participation: upcoming event with the Estonian Government on 28 May.

7. General Policy/ Political update

- 7.1 KP noted that, in line with its responsibilities under the Digital Economy Act 2017, the DCMS had recently published a draft Statement of Strategic Priorities (SSP) on telecoms and post. Ofcom was required to have regard to the SSP and had recognised the draft in its 2019/20 Annual Plan but may be required to produce something additional once the UK Government finalised the Statement.
- 7.2 KP went on to highlight Ofcom's publication of Terms of Reference for its review of BBC news and current affairs output. This would include consideration of elements relevant to the recommendations of the Cairncross Review, which had been the subject of correspondence between the DCMS Secretary of State and Ofcom's Chief Executive.
- 7.3 KP then highlighted that the UK Government's consultation on the advertising of high fat/salt/sugar products was expected to be published soon, as was their White Paper on Online Harms.
- 7.4 LA asked about online regulation, observing that social media companies appeared to be becoming regulators in themselves with a shift towards the removal of harmful content. While there was content that was obviously fake there were difficult questions about grey areas and the criteria being used to make decisions. LA also noted some of the significant challenges posed to mental health in this area.
- 7.5 KP responded by noting it was likely that most regulatory models would require some form of fact-checking, although no decisions had been made on how this might be done. It was likely to be a space that would need to be addressed by any future regulator or regulators. Ofcom had stepped up its media literacy programme as part of its contribution to thinking and work in this area.

8. Advisory Committee Code of Conduct

- 8.1 Ofcom colleagues summarised the new Code of Conduct for Advisory Committees, which was consistent with updated Codes across Ofcom's governance and had been approved by the Board. In conversation:

- It was highlighted that while the Code looked at the seven principles of public life, there were nine in Scotland and this was worth bearing in mind;
- LL suggested a change should be made to para 4.3 include reference to the Scottish Parliament, Welsh Assembly and NI Assembly to ensure terminology was correct; **GP**
- It was recommended that the relationship between and distinct functions of the role of the AC Chair and the respective Nations Board member could usefully be acknowledged; **GP/JG**
- It was felt consideration should be given as to whether the Code should be sent to ex-members of the ACS given it covered ongoing duties to respect confidentiality etc. (it was possible this was adequately covered in letters sent to former members towards the end of their terms);
- It was agreed a small change to the wording of para 1.6 should be made to make clear the AC's role in advising Ofcom on policy initiatives.

9. Brexit update

- 9.1 The Ofcom project team provided the ACS with an update on work relating to Brexit. In relation to a potential no deal, there were three areas of interest worth highlighting:
- Free mobile roaming across Europe would end for consumers because of the removal of wholesale roaming tariff caps (although in the event of a deal, the UK's MNOs had publicly committed to maintaining surcharge-free roaming for UK citizens travelling in the EU, if it remained commercially feasible);
 - The European Convention on Transfrontier Television ("ECTT") would take effect, replacing the Audio-visual Media Services Directive ("AVMS"). The main impact of this would be that Ofcom-licensed services would not be able to broadcast into countries that are not signatories of the ECTT, most notably Ireland and the Netherlands;
 - The production sector could see worker shortages;
 - Cross-border post could drop which raised questions about the sustainability of the universal service.
- 9.2 In discussion it was noted that the sectors Ofcom regulates are fairly well prepared for the impact of no deal. In relation to production, the key concern so far related to the movement of talent. In addition, some broadcasters had signalled their intention to hand back licences as they prepared for the new regime.
- 9.3 The committee also discussed broadcaster willingness to maintain European works status for UK productions should the UK no longer be signed up to the AVMS Directive. It was Ofcom's understanding that the UK Government considers this will be the case under the ECTT but it remained to be seen whether or not this view would be shared by EU Member States.

10. Access Review update

- 10.1 The ACS was provided with a brief overview of Ofcom's proposals for incentivising investment in fibre networks; the goal was to see significant long term investment in networks, allow consumers the choice between infrastructure provider (where feasible) and allow the companies making those investments the chance to make a fair return.
- 10.2 It was indicated that around 1/3 of the UK is unlikely to see prospects of infrastructure competition (i.e. more than one provider), so Ofcom was proposing rules to allow Openreach to spread its costs amongst its customer base (similar to a 'Regulated Asset Base' model followed in other sectors). This approach fitted with other important areas of Ofcom's work, including the Business Connectivity Market Review and Duct and Pole Access remedies.
- 10.3 BD commented on the potential benefits of these proposals for delivering mobile backhaul to rural areas and noted it would be helpful to see the breakdown of the number of premises in Scotland which are deemed to be 'potentially competitive' and how this compares to the rest of the UK.

JR

There was a short discussion about how the proposals fitted with other discussions Ofcom had been having with the Scottish Government on infrastructure sharing

(i.e. ATI Regulations), which would be picked up in a roundtable with Scottish Ministers and industry players in April.

11. Content Board update

11.1 MC summarised key issues that had recently been discussed by Ofcom's Content Board, noting:

- Ofcom had recently called in the BBC's proposal to extend the iPlayer window to a year for a public interest test;
- work on the next PSB review would begin this year;
- the latest Beyond Broadcast report had been considered;
- work had begun on the 2019 Diversity in Broadcasting Report, with MG ALBA having been approached to make a voluntary submission.

11.2 The ACS discussed how the recently announced plans for Britbox would need to be factored in to the consideration of the iPlayer public interest test. The committee also noted the PSB work could usefully look at the value of PSB to audiences and the different models for delivery of PSB content. SW agreed to explore if the Beyond Broadcast work could be shared with ACS members.

SW

12. AOB

12.1 In discussion it was agreed to look into possibility of using Diligent for sharing papers ahead of future meetings.

GP

12.2 LL announced the appointment of two new Committee members following a comprehensive interview and selection process; the members would formally join from the 1 May and participate in the June meeting.

13. Date of future meetings

13.1 The ACS meetings for the remainder of 2019 will take place on 25 June, 26 September and 4 December.

14. Items for information only

14.1 The Committee noted the Ofcom Contact Centre Information, Small scale DAB and Annual Plan updates.