



DTI consultation: consumer representation and redress

Ofcom response

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Ofcom response to DTI consultation on consumer representation and redress

Introduction

1. Ofcom supports the creation of a new consumer body with an economy-wide perspective. We agree that by streamlining the arrangements for consumer representation in utility sectors such as energy and post, significant cost savings can be made and consumers' interests can be represented more effectively. We believe that even for a sector such as electronic communications, which has long ceased to display the characteristics of a utility, Consumer Voice has the potential to perform an important advocacy role that complements the input to policy-making provided by Ofcom's statutory Consumer Panel.
2. In thinking about future institutional relationships, it will be important to combine the strengths of the current arrangements for consumer representation, including Ofcom's statutory Consumer Panel, with the benefits of rationalisation and economy-wide vision that will be delivered by Consumer Voice.
3. The arrangements for consumer representation in the communications sector should take account of the way that communications markets are evolving and converging, with the UK embracing digital communication in all its forms. There are now over ten million broadband connections, digital TV is in more than two-thirds of homes and sales of DAB digital radio sets are approaching the three-million mark. In mobile, 3G is taking off, with more than four million users, and there is a growing range of televisual content being delivered, on demand and streamed, over an increasing number of platforms and devices, both fixed and mobile.
4. Such rapid change and convergence means that communications has long since ceased to resemble a utility sector. And regulating in such a fluid environment requires a strategic approach which is a long way removed from traditional utility regulation. Our strategic reviews of telecoms, spectrum and public service broadcasting have enabled us to consider how these sectors are evolving, identify the key issues requiring regulatory action and remove regulation which is no longer necessary.
5. The model of consumer representation for communications should reflect the dynamic and converging nature of the sector, and the specialist and in-depth knowledge of Ofcom's Consumer Panel means it has been able to keep pace with developments and make important contributions to policy formation. It has provided valuable, evidence-based advice on how the needs of vulnerable groups should be addressed in the run-up to digital switchover. And it carries out a major annual tracking survey examining how consumers use, and are able to access electronic communications.
6. The Consumer Panel has also enhanced the ways that consumers' interests are reflected in Ofcom's decisions. Over the last twelve months, the Consumer Panel has been developing a 'toolkit' to help both regulators and government departments factor the consumer interest into the formation and implementation of

policy. Ofcom considers this a significant step forward in the process of thinking about consumers' interests, and has undertaken to implement the Consumer Panel's recommendations in full.

7. The Consumer Panel represents very good value for money. The combined budgets of the consumer bodies considered by the DTI's consultation document for inclusion in Consumer Voice is £30 million, and these organisations have a combined staff of 503. Of these totals, only 2% of the cost and less than 1% of the headcount is made up by Ofcom's Consumer Panel.¹
8. The model of the Consumer Panel as a 'critical friend' of Ofcom was the result of careful consideration during the passage of the Communications Bill. As Dr Kim Howells MP, then Minister for Consumers and Corporate Affairs, said during the committee stage:

“[A watchdog for Ofcom].....is not the role that we want to create for the Panel, the purpose of which is to be the independent voice of consumers for Ofcom....it should be a critical friend of Ofcom and give it expert advice.”

9. In Parliament, the debate on consumer representation was interleaved with the wider debate about Ofcom's advisory committee structure and the inter-relationship between the twin 'citizen' and 'consumer' elements of its primary duty. An important consequence of this debate was the Government's decision to separate the responsibilities of Ofcom's Consumer Panel and Content Board, but create a mechanism to allow the Consumer Panel to engage with content issues where appropriate. This parliamentary debate took place only three years ago. To our knowledge, there is little desire in parliament to change this carefully-crafted system of checks and balances. We think it would be helpful, in thinking about how Consumer Voice might relate to Ofcom and to the Consumer Panel, not to re-open this debate or disrupt this careful balance; but rather to work towards a complementary relationship where each body can play to its strengths to maximise the interests of consumers. We set out below our thoughts about this could be achieved.

Comments on the proposed model

10. We note that there are three elements of the model which the Government is proposing:
 - consumer advice;
 - representation, including advocacy and input to policy-making; and
 - resolution of complaints.
11. We comment on each of these areas in turn. Our intention is to ensure that:
 - consumers in the communications sector continue to receive helpful advice and have their complaints resolved satisfactorily; and

¹ Source: *Consultation on consumer representation and redress*, DTI, Annex A

- Ofcom continues to receive constructive and informed policy and strategic input from its statutory Consumer Panel to help us reflect fully the interests of consumers in the decisions that we make.

Consumer advice

12. We support the Government's intention that Consumer Direct should be a 'one-stop shop' for consumers which by the end of this year will serve the whole country. We believe Consumer Direct has the potential to complement the role of the Ofcom Contact Centre (OCC) in responding to enquiries from consumers about communications services. However, the OCC carries out a much broader range of functions than Consumer Direct: for example, it deals with complaints about broadcasting content, and with spectrum interference and licensing issues.
13. Because the OCC will retain its role in dealing with enquiries from consumers about communications-related issues, there will clearly be a need for effective co-ordination between Consumer Direct and the OCC. To some extent, this is a live issue already as Consumer Direct currently provides advice on communications-related issues should consumers call about these subjects. We therefore have regular dialogue with Consumer Direct already, although as it becomes more well-known and receives more such calls, we will need to work out the detail of how it will interact with the OCC.
14. This is an important issue for Ofcom because as well as providing advice, the OCC collects valuable information about consumer concerns, for example, about the deception caused by rogue internet diallers. The OCC therefore acts as an early-warning system, with the information gathered feeding into our work to protect consumers from mis-selling and other harmful conduct. The fact that the OCC is in-house means that we can ask for specific questions to be put to consumers, thus improving the usefulness of the information which we obtain. There will therefore be a need to develop systems to enable information to be shared between Consumer Direct and the OCC, both promptly and at a level of detail which allows us to interrogate the data to inform our decision-making and agenda-setting.

Representation

15. We support the creation of a new consumer advocacy body with an economy-wide perspective. We think there is merit in streamlining the arrangements for consumer representation in utility sectors in line with the recommendations of Philip Hampton's report, *Reducing Administrative Burdens: Effective Inspection and Enforcement*. For a sector such as communications which is no longer a utility, there is potential for Consumer Voice to play an important advocacy role which complements the role of our Consumer Panel in providing specialist input to policy development.
16. As noted above, it is important not to expect this rationalisation to deliver better value for money in the communications sector than the current arrangements. Ofcom's Consumer Panel represents very good value for our stakeholders. The Consumer Panel's budget for 2006/7 is less than £1m; it employs just four permanent staff; and is housed within Ofcom's London office. This means that the

approach to consumer representation in the communications sector is already cost-effective.

17. The consultation document recognises that Ofcom's Consumer Panel has a number of features which distinguish it from Energywatch and Postwatch, namely that it:
 - does not handle consumer complaints;
 - does not have a regional network;
 - does not employ its own staff; and
 - is integrated into Ofcom (in that the administrative support sits within Ofcom) rather than being a stand-alone organisation.
18. Furthermore, the fact that the staff who support the Consumer Panel are based in Ofcom's offices encourages constructive working relationships and engagement early on in the process of policy development.
19. As discussed, the debate about consumer representation during the passage of the Communications Bill formed part of the wider debate about Ofcom's advisory committee structure and the inter-relationship between the twin 'citizen' and 'consumer' elements of its primary duty. An important consequence of this debate was the Government's decision to separate the responsibilities of Ofcom's Consumer Panel and Content Board, but create a mechanism to allow the Consumer Panel to engage with content issues where appropriate. Section 16(6) enables Ofcom to invite the Consumer Panel to engage on content issues with a high consumer dimension in a way which respects the responsibilities of the Content Board, and to specify the aspects of the issue that the Consumer Panel is being asked to consider. This mechanism provides a flexible way of handling the increasingly blurred distinction between telecoms and broadcasting, for example, the development of content for mobiles, while ensuring that the activities of the Content Board and Consumer Panel are complementary rather than overlapping.
20. As a consequence of this carefully considered settlement, the Consumer Panel has devoted significant resources to issues such as digital switchover and the citizenship dimension of communications issues. In particular, in November 2004 the Consumer Panel provided a report to the Secretary of State for Culture, Media and Sport, *Supporting the most vulnerable consumers through digital switchover*. More generally, the Consumer Panel has adopted a strategic approach, successfully providing expert input to key projects such as our strategic review of telecoms. It has also pioneered the development of a 'toolkit' to ensure that the interests of consumers are at the heart of Ofcom's decisions.
21. Therefore, while we recognise and support the Government's desire to improve the current model of consumer representation, we believe that in the communications sector the current arrangements are working well and have been of great benefit to consumers. In our view, there would be considerable merit in minimising disruption at a time when the existing arrangements have bedded-in effectively following the Consumer Panel's creation in February 2004.

22. Most importantly, we do not think that consumers' interests would be best served by incorporating the Consumer Panel in Consumer Voice (options 1 or 2 in the consultation document). Notwithstanding the disruption to arrangements which are working well and the lack of available cost savings, we think that consumer input into policy making would be poorer as a result. This is because detailed input into policy-making, which Ofcom's statutory Consumer Panel does very well, is a very different function to consumer advocacy. Whereas input into policy-making involves us sharing our confidential early-stage thinking and inviting the Panel's opinion, consumer advocacy is a much broader and more public activity.
23. We note that the Government's suggested approach in the communications sector would be for the Consumer Panel to co-exist with Consumer Voice (option 3 in the consultation document). This would mean that although the Consumer Panel would remain a separate entity, Consumer Voice's aegis would extend to the communications sector. As the consultation document states, "the existence of a regulator's consumer panel would not prevent Consumer Voice from being active on behalf of the consumer in the relevant market."
24. We support this co-existence model, but it is important that it is clear how this would work in practice. In particular, should there be potential for the Consumer Panel and Consumer Voice to engage in overlapping activities and to adopt different positions on the same issue, this could be an unhelpful result for consumers. It would result in a lack of clarity in the advice that Ofcom received, and the need to engage with two separate consumer bodies on each issue could take up significant resources and slow down the process of decision-making. It would also open up the possibility of both bodies expecting a particular issue to be picked up by the other and deciding not to tackle it, with a resulting gap in consumer representation. This risk would be mitigated to some extent by cross-membership of the two bodies, but in our view, overlapping jurisdictions would not generally lead to the most efficient use of resources by either the Consumer Panel or Consumer Voice, or by Ofcom. However, we recognise that on occasions where Consumer Voice carries out cross-industry campaigns or advocacy, such clear delineation of jurisdictions may not always be possible and in those cases, it may be appropriate for Consumer Voice to contribute to the policy-making process as well.
25. For these reasons, particular thought needs to be given to exactly how Consumer Voice and the Consumer Panel would work together. The consultation document suggests that the Consumer Panel would provide input to policy-making, as it does today. We believe that in relation to sectors such as communications, which are very different from traditional utilities, Consumer Voice should focus on consumer advocacy: a broader, more public role involving activities such as raising awareness of cross-sectoral issues, such as the difficulties experienced by vulnerable consumers, and providing information to consumers to enable them to exercise their rights – for example, to switch supplier or make use of cooling-off periods.
26. We think this is the best way to combine the strengths of the current system with the benefits of rationalisation of arrangements across the economy. However, it will be essential that the respective roles for Consumer Voice and the Consumer Panel are tightly defined in this manner from the outset. This could be enshrined in

legislation, or be subject to a Memorandum of Understanding (MOU) between Ofcom, Consumer Voice and the Consumer Panel.

27. Finally, it is important to note that Ofcom's Consumer Panel covers the UK including Northern Ireland, and this arrangement has proved to be very effective. Though for some sectors there are separate arrangements for consumer representation in Northern Ireland, the model adopted for communications appears to work well. It will be important that there should continue to be appropriate arrangements for Northern Ireland following the Government's review.

Resolution of complaints

28. We note the Government's proposal to adopt the Ombudsmen model developed in the communications sector, namely that a company must join an Alternative Dispute Resolution (ADR) scheme, but is free to join any scheme which is authorised by the appropriate regulator.
29. We support ADR schemes which are independent, industry-funded, adequately resourced, free to the consumer and produce outcomes binding on service providers. Such schemes need to provide the right incentives on service providers to resolve complaints with their customers themselves, and where complaints need to be referred to the Ombudsman, for them to be resolved as efficiently as possible. We think it is right that ADR schemes should be funded by industry, and that funding should be proportionate, in large part, to the volume of complaints generated by each provider.
30. However, the extension of ADR schemes across different sectors may add complexity, and it will be worth thinking this through in some detail. If ADR schemes cover more than one sector in future, they may need to be approved by multiple regulators. Difficulties may arise if some regulators approve a particular scheme, but others do not. For this reason, it will be important to think through approval arrangements so that they serve the best interests of consumers in guaranteeing quality and avoid unnecessary bureaucracy.

Conclusion

31. Ofcom very much supports the rationalisation of consumer representation across different sectors of the economy. We agree that consumers stand to benefit significantly from more streamlined and effective institutional arrangements.
32. In relation to the communications sector, these arrangements need to combine the strengths of the already-effective arrangements in place today with the benefits from rationalisation. Ofcom considers that there is a way to do this. With regard to Consumer Voice in particular, it would involve the retention of Ofcom's statutory Consumer Panel and for the respective roles of the Consumer Panel and Consumer Voice to be defined clearly so as not to overlap.
33. We welcome the opportunity to contribute to the Government's thinking in this important area and would be happy to discuss any of the points we have made in this response.