



Fairness Framework
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

By email: fairness.framework@ofcom.org.uk

RE: A framework for assessing fairness in broadband, mobile, home phone and pay-TV

Dear Sir/Madam,

1. The Consumer Council for Northern Ireland is an Arms-Length Body of The Department for the Economy. It was established in 1985, under the General Consumer Council (Northern Ireland) Order 1984. As a statutory body, it has a remit to promote and safeguard the interests of consumers and has specific functions in relation to energy, water, transport, food and postal services. It also has special regard for vulnerable consumers.
2. We welcome the opportunity to provide a response to Ofcom's consultation on its framework for assessing fairness in broadband, mobile, home phone and pay-TV. Consumers have every right to expect to be treated fairly by their service providers. However, it is clear that aspects of the telecoms market are not working for consumers. In December 2018, the Competitions Market Authority (CMA) published its response to Citizens Advice's Supercomplaint on the loyalty penalty. It found that telecoms consumers are being penalised £1.3bn per year for being loyal customers. This has a greater impact on vulnerable consumers who are more at risk of paying the loyalty penalty and may be least able to afford it. Also, broadband consumers report the lowest levels of satisfaction across all essential markets¹.

Northern Ireland context

3. In addition to these issues, connectivity in Northern Ireland does not compare favourably to the UK. For example, we still have the highest proportion of premises unable to access decent broadband connections. 5% of premises are affected in Northern Ireland, compared to just 2% in the UK. This is more common in rural areas, with 17% of premises affected in Northern Ireland compared to 12% in the UK².

¹ Ofcom *Comparing Service Quality* – April 2019

² Ofcom *Connected Nations Report* 2018

In addition, ultrafast broadband is available to over half of UK properties (53%) but only 45% of properties in Northern Ireland³.

4. As Northern Ireland has the highest percentage across the UK of premises without decent broadband, consumers are more likely to rely on their mobile phones to conduct online activities. However:
 - 21% of the Northern Ireland landmass does not have 4G services from all operators:
 - 41% of premises do not have indoor 4G coverage from all operators; and
 - 2% does not have 4G coverage from any operator.
 - 13% of the Northern Ireland landmass does not have voice coverage from all four operators;
 - 21% of premises do not have indoor call coverage from all four mobile networks; and
 - 1% does not have voice coverage from any operator⁴.

Consumer Principles

5. It is important that Northern Ireland consumers have confidence that communications providers are treating them fairly. We welcome the work that Ofcom is undertaking as part of its Fairness for Customers programme, including the publication of its fairness commitments.
6. The Consumer Council appreciates that assessing fairness is not always straightforward. Certain practices may be considered fair, even though some consumers may lose out as a result. Therefore, judgement will need to be applied on a case by case basis. However, a fairness framework will provide some clarity to communications providers **and** consumers in terms of Ofcom's regulatory approach and of the circumstances when it may intervene in the market.
7. To that end, we welcome the opportunity to comment on Ofcom's proposed fairness framework. Central to the work of The Consumer Council are eight consumer principles (Figure 2) which we use to understand how particular issues, policies and regulatory proposals are likely to affect consumers. We believe that this is an excellent foundation for any fairness framework.

³ Ofcom *Connected Nations Update: Spring 2019*

⁴ Ofcom *Connected Nations Update: Spring 2019*

Figure 2 Consumer Principles



8. In addition, The Consumer Council understands that vulnerability in Northern Ireland is complex and dynamic in its nature. Whilst our statutory duties highlight four areas of consumer vulnerability (disabled or chronically sick, reside in a rural area, pensionable age and on a low income), The Consumer Council recognises that vulnerability is transient, and that particular circumstances may result in a vulnerability for a particular period, for example following bereavement or unemployment. As part of the fairness framework, Ofcom will consider whether consumers in vulnerable circumstances are being harmed. We also recommend that Ofcom provide guidance to communications providers on how they can identify consumers in vulnerable circumstances and provide additional assistance.
9. Unfair practices can occur during any part of the consumer relationship with their provider. It can also take any form. For example, consumers may be treated unfairly in relation to accessing a service or receiving poor quality of service as a result of a rural location or other geographic setting. We note that Ofcom’s approach is to categorise fairness in terms of procedural fairness and distributive fairness. We believe that the eight consumer principles fits n
10. eatly into these categories, and therefore should be considered in the round within Ofcom’s framework. The following section considers each principle in turn.

Access

11. Consumers have the right to access the telecoms services that they need. However barriers to access remain. These barriers can be because of geography, affordability, vulnerability, rural location competition and quality. When assessing fairness, Ofcom should assess whether consumers have access to all the services that they need and, if not, identify the barriers and assess whether they are reasonable or unfair.

Choice

12. In an ideal market, consumers should be able to choose from a range of telecoms providers. Unfortunately, around 60% of premises in Northern Ireland do not have a choice of provider. The fairness framework should reflect on whether barriers to choice are justified and whether the available provider offers services that are responsive to consumers' needs.

Safety/Quality

13. Consumers expect to receive a service that is safe but also of good quality. In Northern Ireland, however, 5% of premises are still unable to access decent broadband speeds. The fairness framework should identify if consumers in Northern Ireland are receiving good quality outcomes; whether services are delivered to high standards; whether the risks are appropriately allocated between consumers and providers; and if consumers are getting value for money.

Information

14. Consumers need accurate and timely information to make informed decisions, for example choosing the best deal or understanding new products/technologies that are available. Therefore, clear, simple, transparent and easy to understand information is essential to allow consumers to make informed decisions and exercise their rights. We agree with Ofcom's proposal to consider how providers treat customers throughout their journey as part of the fairness framework, considering whether information is clear, easy to understand and timely. Ofcom may also wish to reflect on whether there are effective safeguards against the misuse of personal information.

Fairness

15. Fairness relates to the treatment of consumers by providers when using goods or services. UK and Northern Ireland law demands that people should not be unfairly discriminated against due to their

personal circumstances. Equalities law make it illegal to treat a person less favourably due to a protected characteristic and require providers to make reasonable adjustments for certain individuals.

16. UK consumer legislation (Consumer Rights Act, Consumer Protection Regulations etc.) places a clear emphasis on businesses providing a fair service to consumers. Fairness therefore covers all aspects of the customer-provider relationship. It is not just about avoiding specific unfair practices that exploit imbalances of power or behavioural economics models of bias in consumer decision-making, but it is also about fostering a culture where fairness is placed at the heart of a heart provider's business model.
17. In assessing fairness, Ofcom should look to:
 - Assess whether discriminatory or unfair practice are targeted at specific population groups;
 - Ensure that any cross-subsidisation across groups of consumers is justified;
 - Ensure providers understand consumer vulnerabilities and that sufficient priority is given to this; and
 - Ensure unfair trading practices are being monitored and acted upon by Ofcom.

Representation

18. The Consumer Council recognises that consumer representation is not only the responsibility of Ofcom, but that consumer bodies also have a role to play. We look forward to the outcome of The Department of Digital, Culture, Media and Sport's (DCMS) consultation on consumer advocacy in the telecoms market to ensure consumers are further supported going forward.
19. It is important that consumers have a say in how their services are provided. Regulators, service providers and consumer bodies need to listen to these views to take proper account of consumers' needs.
20. We note the Financial Conduct Authority's questions on distributive fairness, in its research note on Price Discrimination: How should we deal with questions of fairness (July 2018). As part of its test on fairness, FCA considers whether society views the price discrimination as egregious or socially unfair. Whilst this framework specifically focuses on fairness of price, we believe that Ofcom should consider this as part of its framework. Consumer trust and confidence in the telecoms market is essential for it to work properly. Therefore, if consumers consider a practice unfair, Ofcom must consider this when applying its framework.

Redress

21. There are no consumer rights without consumer redress. If consumers cannot enforce their rights, there is little incentive for providers to follow the rules. As well as being unfair, this undermines competition as consumers may not have trust in the market to engage in it fully. The Consumer Council welcomes Ofcom's proposals to consider how promptly problems are resolved as part of its framework.

Education

22. Telecoms is a complex and challenging market. A strong consumer protection framework is essential for giving consumers the confidence to exercise choice. Consumers should be empowered to make informed choices which in turn shape how the market operates. The Consumer Council welcomes Ofcom's proposals to consider whether consumers are supported in making well-informed decisions.

Conclusion

23. We strongly recommend that Ofcom adopt these principles as part of its fairness framework. We believe that this will lead to a robust framework upon which Ofcom can assess fairness in the telecoms market, bringing consumers to the heart of the process and ultimately resulting in improved consumer outcomes.

24. We are happy to discuss this response, or other issues arising from it, with Ofcom if required.

Yours sincerely

Ciara McKay

Policy Officer