



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofcom mobile sector assessment second consultation

September 2009

Ofcom mobile sector assessment second consultation

About Consumer Focus

Consumer Focus welcomes the opportunity to respond to Ofcom's mobile sector assessment second consultation. This response is not confidential and we are happy for it to be published in full on Ofcom's website.

Consumer Focus is the statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, Northern Ireland. We will be the voice of the consumer, and work to secure a fair deal on their behalf. We were created through the merger of three consumer organisations – energywatch, Postwatch and the National Consumer Council (including the Welsh and Scottish Consumer Councils). The new approach allows for more coherent consumer advocacy, with a single organisation speaking with a powerful voice and able to more readily bring cross-sector expertise to issues of concern.

The Consumer Focus Forward Work Programme to March 2010 sets out the work that we will undertake to champion the rights of consumers, and includes a work project to explore consumer needs and the opportunities to influence improvements in the mobile phone sector. We work in partnership with the Communications Consumer Panel, and the work we are carrying out in the mobile phone sector is intended to inform and complement, rather than duplicate, work carried out by Ofcom and others in this sector.

Introduction

Consumer Focus welcomes *Mostly Mobile*, the second consultation in Ofcom's mobile sector assessment. We believe that, while several of the issues covered in the consultation paper warrant more detailed investigation, this comprehensive overview of issues across the mobile phone sector is a valuable study, particularly in highlighting areas where the market may not be working in the best interests of consumers.

This response addresses issues of concern to Consumer Focus in each of the consultation paper's chapters 3 to 9 in turn. Inevitably, it may not cover all of our concerns because of the breadth of issues involved, as well as the scope for emerging issues to reshape the consumer agenda. In some cases, issues are covered in more detail in other Consumer Focus publications or submissions to previous Ofcom consultations; these are referred to where appropriate and are available on the Consumer Focus website www.consumerfocus.org.uk.

In March 2009, Consumer Focus commenced a work project to explore and address consumer detriment in the mobile phone sector. We conducted a consultation, entitled *Mobile: What's the problem? Consumer priorities in the mobile phone sector*, between April and June 2009, to gather views and evidence on areas of priority for Consumer Focus in the GB mobile phone sector. Alongside this, a 2,000-sample online panel survey was commissioned to further explore consumer priorities in the sector and provide an up-to-date snapshot of the consumer experience.

Consumer Focus is in the process of formulating the consumer priorities around which our advocacy and campaigning work will be focussed going forward, based on the responses to this consultation and research, as well as our ongoing stakeholder engagement and information gathering. We look forward to working with Ofcom, adding value to the activities identified in this consultation paper where possible, to ensure a fair deal for consumers in the mobile phone sector.

Consumer Focus response to Ofcom mobile sector assessment second consultation: summary

- Ofcom must continue to act to protect and empower consumers in the mobile phone sector, using a range of regulatory measures tailored to tackle particular areas of consumer detriment.
- Consumers have been served well by competition in the mobile market, but there are areas in which competition is failing to deliver benefits to consumers.
- Poor network coverage is one of the most significant sources of consumer detriment in the mobile phone sector; a number of challenges exist for Ofcom in tackling poor coverage and improving consumer information on coverage.
- High levels of complexity and poor price transparency in the mobile market are issues of concern to Consumer Focus; Ofcom must be clearer about how it proposes to address these sources of consumer detriment.
- Consumers would benefit from clear, accessible, comparative information on mobile network operators' customer service standards.
- A number of barriers exist for disabled and vulnerable consumers engaging in the mobile market, which Ofcom must address.
- New and emerging types of mobile services raise important issues for Ofcom around consumer engagement, security and protection.

Section 3: The changing market environment

Q 3.1: Are there any additional sector trends that we should consider in our analysis?

Q 3.2: Have we identified the right regulatory challenges?

Predicting the future

Before describing the trends identified as affecting the future of the mobile sector, Ofcom notes the caution urged by some respondents to its first mobile sector assessment consultation towards decision-making on regulatory approaches based on predictions of future developments in the market. Consumer Focus understands that predicting how the mobile market will change in future is an imperfect practice. However, projecting future scenarios is important so that attempts can be made to foresee market developments which work against the interests of consumers and take action accordingly. Ofcom should address problematic practices and policies before they become systemic. However, predicting consumer harm in the market does not necessarily mean imposing a regulatory burden on the basis of a projected scenario. Solutions should be determined on a case-by-case basis and should not exclude consideration of self-regulatory or co-regulatory approaches, backed by graduated enforcement mechanisms, alongside options for regulation being imposed by Ofcom.

Mobile data services

The second of the five trends for potential market development identified by Ofcom describes mobile data services continuing to grow rapidly, as they have done during the past 18 months. The consultation paper notes at 3.24 that developments in pricing structures have stimulated consumer take-up of mobile data services, with the introduction of flat-fee structures and bundled packages with unlimited data-browsing add-ons increasing consumers' awareness of what they will pay for these services.

While Consumer Focus agrees that the price transparency of mobile data services has improved with moves away from 'per megabyte' pricing, we remain concerned about tariff complexity and low levels of price transparency in this area. Mobile consumers face a complex marketplace in which multiple operators offer a huge range of changing tariffs containing varying allocations of voice minutes, text messages and data allowances. As more consumers take up mobile data services, and the number of tariffs offered which include data allowances increases, consumers will face further complexity in their choice. Solutions to the problems caused by price transparency and tariff complexity are discussed in more detail in section 6 of this response.

Ofcom notes at 3.25 that with the rapid rise in volumes of data traffic across mobile networks, the capacity of these networks is likely to become increasingly constrained. Consumer Focus is concerned about the potential negative impact of these constraints on the consumer experience of mobile phone users. We would be keen for Ofcom to carry out further examination of the effects of this pressure on capacity for the quality of service enjoyed by consumers, as well as an assessment of the options for action that would be open to it to address any consumer detriment that might potentially arise.

Figure 8 illustrates a 'virtuous circle' in relation to mobile data services. Consumer Focus agrees with the analysis presented by Ofcom in terms of the beneficial role that each element of this circular model plays for consumers. However, we would stress the need to avoid an assumption that this model will drive take-up of mobile data services by all consumers.

As discussed further in section 7 (*Access and inclusion for disabled and vulnerable citizens*), levels of mobile phone ownership are lower among older and disabled people, and these groups are also likely to be those least engaged with mobile data services.

Despite the considerations towards accessibility of application developers, take-up of data services by the broad mainstream of mobile users may mask the exclusion of some consumers from the technology. We urge Ofcom to monitor the take-up of mobile data services to examine low usage among particular groups of consumers, and to identify barriers that are stopping the technology from being used. Given the likelihood that mobile data services will become ubiquitous for consumers in future, it is important that factors causing consumer exclusion are addressed before they become systemic.

Challenges for Ofcom

At 3.91, Ofcom outlines some new challenges created by developments in the mobile sector. The growing role of mobile in delivering new online services to consumers is likely to mean that consumers find themselves accessing an increasingly broad range of services using their mobile device, from entertainment to public services and personal services such as online banking. This increasing role for mobile in consumers' lives magnifies the challenges which exist around consumer protection and access.

Ensuring consumers' safety and privacy as they use new mobile services is paramount, for its own sake and to aid uptake of new services. Consumers will be much slower to adopt some new services and technologies if they are unable to operate in the online mobile environment with confidence. Issues around access, both in terms of coverage and uptake of new services by often-excluded groups such as elderly and disabled consumers, have far-reaching implications. Communities may suffer substantial economic detriment if they do not receive adequate access to new services, while individuals excluded early on in the development of new services are likely to remain excluded later.

Similarly, new technology and services will present challenges to some consumers. Ofcom should not underestimate the extent to which many consumers wish to use their mobile phone for voice and SMS use, but are not keen to take up new services. The consultation carried out by Consumer Focus between April and June 2009 to scope consumer detriment in the mobile sector prompted several responses from consumers whose preference was for simpler handsets with fewer functions.

Some of these responses equated increasing convergence and functionality with extra cost and unnecessary 'turnover' of handset upgrades, with related implications for sustainability in the mobile industry:

'I am concerned that mobile phone companies are not doing enough to encourage consumers to take back their old mobile phones for recycling as well as not making longer-lasting mobile phones which could be updated with software rather than encouraging consumers to 'upgrade', ie, replace the handset.'

'This is what many consumers, particularly more mature customers, want – not a radio, mp3 player, camera, internet link, etc, but a PHONE. Why should we have to pay for a lot of facilities that we do not want or need?'

It is important to recognise the need to present consumers with alternative ways of accessing services other than mobile-only, to ensure that consumers who choose to retain a mobile only for voice and SMS use are not excluded from accessing other services as a result.

As Ofcom identifies, regulation will need to adapt to changes in the market. In particular, changes in the value chain of service delivery which remove emphasis from mobile operators will create gaps that may allow consumer detriment to arise if not kept in check. These developments reinforce the need for Ofcom to predict future market developments, foresee regulatory challenges and take steps to tackle consumer detriment.

On the challenges that may arise around competition in the event of greater network sharing, Consumer Focus believes a balance must be struck. Network sharing has the potential to create a market-driven solution to the problem of not-spots and poor mobile coverage in rural and remote parts of the country. However, increased network sharing also carries implications for competition in the market. Ofcom and other relevant regulatory authorities will need to examine any sharing agreements that are reached and judge on a case-by-case basis whether the deal will bring sufficient benefits for consumers to be permissible.

Future regulation of mobile call termination rates, in the event of significant fixed-mobile convergence, is an area that would warrant further scrutiny by Ofcom. In our response to Ofcom's recent consultation on *Mobile Call Termination Rates*, Consumer Focus stated the view that, for the time being, continuing regulation of termination rates is necessary. We also stressed the need to consider how best to supply consumers with information on termination rates, and urged that future changes to the termination rate regime do not add to the complexity for consumers that already exists in the mobile market.

Section 4: Competition and new entry

Q 4.1: We have outlined a number of factors which may affect the future market structure, including network sharing, spectrum and potential consolidation. Do you agree with this assessment, including risks and benefits that we have outlined?

Q 4.2: Do you see any risks to competition that we have not highlighted?

Q 4.3: Do you agree that a market review in the mobile sector (other than in the call termination market) is not currently required?

Q 4.4: We have concluded that competition in the mobile sector is currently addressing access concerns adequately. Do you agree?

Competition is benefitting consumers but problems exist

Consumers have been served well by the competitive mobile market in the UK. A choice of networks, services and tariffs is available to consumers, while the market has been consistently innovative in terms of the products and services it offers consumers. The mobile sector has always been competitive; unlike the fixed-line telephony sector, a monopoly has never existed. Against this generally positive backdrop, however, there are areas in which competition is not delivering benefits to consumers, such as pricing complexity, aspects of the switching process and growing contract lengths.

Pricing complexity

Consumer Focus is concerned that competition has not delivered price transparency and simpler tariff structures to consumers in the mobile phone sector. At present, each new tariff appears simply to add to the huge range that already exists for consumers to choose from. We were concerned by the response of one mobile operator to our recent consultation *Mobile: What's the problem?*, which stated:

'We wholly disagree with the suggestion that tariffs are overly complex and confusing... changes to tariffs are made in response to changing consumer demands and are a healthy sign of a competitive market.'

Consumer Focus understands that, in the context of a single operator, the tariff structure at any given time may not be hugely complex. However, across the whole market place, taking into account the bundled deals that combine mobile services with digital TV, fixed-line or internet, we find it hard to believe that consumers gain any advantage from the level of complexity that exists. We believe that consumers would benefit from being able to make more straightforward comparisons between tariffs and we would welcome steps by Ofcom to encourage more transparent pricing in the mobile market.

Switching

Consumer Focus believes that the data presented by Ofcom around switching (Figure 19, p.55) presents a mixed picture. On the one hand, 64 per cent of consumers who have switched report finding the process 'very easy', while 28 per cent of consumers report having switched in the past four years. On the other hand, the 10 per cent of consumers who report finding switching 'very difficult' or 'fairly difficult' represents a large number of mobile users in real terms, while 60 per cent of consumers report having never switched at all. Consumer Focus would encourage Ofcom to identify and address barriers to switching, while examining consumers' reasons for choosing not to switch mobile provider.

The UK system of Mobile Number Portability can create obstacles for consumers seeking to change mobile operator. Though Consumer Focus would welcome further reductions in the time taken to port mobile numbers, our primary concern is over the donor-led aspect of the number portability system. Consumers would benefit from a recipient-led system of number porting, which would place less responsibility on the individual consumer for transacting the number change and would create fewer opportunities to trigger intensive customer retention activity by the mobile operator that the consumer is seeking to leave. Many consumers find companies' retention strategies frustrating because they are only offered the cheapest deals once they indicate that they want to move to different supplier.

Consumer Focus also has concerns around the impact on competition created by current switching arrangements and retention activities. Reserving the cheapest tariffs for customers seeking to change network reduces the downward pressure on tariffs that exists across the broader range of tariffs accessible to consumers. A recipient-led portability process could improve consumers' access to mobile operators' cheapest deals, with positive implications for competition between operators on price.

Increasingly lengthy contracts create obstacles to switching by tying consumers to particular mobile providers for longer periods. In mid-2004, no mobile operator offered a contract longer than 12 months; today, 86 per cent of contracts offered across the market place are more than 12 months. Most contracts are 18 months, but the number of 24-month contracts being offered is increasing¹. Growing contract length was an issue prompting complaints by several of the respondents to Consumer Focus' consultation on consumer detriment in the mobile phone sector. While noting both the increasing popularity of SIM-only contracts and the opportunities that longer contracts create for mobile providers to offer customers subsidies on more advanced handsets, Consumer Focus believes mobile users should not be adversely affected by growing contract lengths. It would be unacceptable, for example, if a consumer was unable to access a 12-month contract offering terms and charges that were competitive with those of a longer duration.

The practice of SIM locking is widespread, and reduces consumers' ability to easily switch network in order to seek a mobile tariff that provides them with the best deal available. Consumer Focus believes there is a low level of consumer knowledge and awareness around SIM locking. We would welcome moves to improve transparency, for example by offering clarity to consumers at the point of sale on the SIM locking arrangements of any given mobile phone deal. Ofcom might explore obligations that could be placed on mobile network operators to ensure that retailers clearly explain details of SIM locking conditions to consumers entering into mobile contracts.

Attitudes to switching vary in different parts of the UK, across a range of different markets, including mobile phone operators and other telecommunications services. In Scotland there is evidence to suggest that consumers tend to be more loyal to particular goods or services, may choose Scottish products on a point of principle, and are less likely to switch in order to save money. As discussed in section 8, evidence shows that there are often particularly low levels of switching, and a lower propensity to switch, in the Highlands and Islands, which can be linked to a lack of mobile coverage across this area.

Consolidation in the mobile market

There have been recent signs of consolidation in the mobile market, with the announcement that Orange and Deutsche Telekom are to merge their UK mobile businesses. Consumer Focus is concerned that the creation of a single company with a large market share (estimated at 37 per cent of the UK market) could lead to less choice for consumers and reduced competition on price and service. We are keen that the benefits of this deal, as well as other similar moves signalling consolidation in the mobile market, should be shared with consumers. We will monitor developments with a view to the consumer rights of Orange and T-Mobile customers (as well as those of 3 and Virgin Mobile who share the T-Mobile network) being protected throughout the merger process. We would welcome a view from Ofcom on the implications for consumers of this deal and of consolidation in the mobile market more generally.

Ofcom should monitor the potential for market consolidation in the provision of mobile content, as well as among mobile network operators, where an increasing concentration of large media players in the internet arena has been observed.

¹ Ofcom, *Mobile Citizens, Mobile Consumers* (p.19)
<http://www.ofcom.org.uk/consult/condocs/msa08/msa.pdf>

Mobile internet and competition

It is important that the mobile market subscribes to the principles of net neutrality, open source and open standards and inter-operability, and that these issues are monitored for signs of anti-competitive behaviour. We have seen in the internet sector that once a market advantage is achieved it becomes almost impossible to dislodge².

Consumers need to have freedom of choice and access to use and provide content, to services or applications of the consumer's choice, to attach devices of choice and to be free from discrimination according to source, destination, content and type of application. Traffic should not be managed on a network beyond what is necessary for the network to operate efficiently and users to engage freely with it.

Consumer Focus is concerned that, in the absence of net neutrality, broadband providers may block the content of competitors or edit available content, with a consequent impact on consumer choice, as well as potentially on prices and competition. In some cases, this blocking may limit the ability of small companies to compete; for example, there is evidence of blocking of applications such as instant messaging and VOIPs (Voice Over IP which allows users to make phone calls using a computer network).

Without a commitment to inter-operability, equipment and devices purchased by consumers may become redundant, create cost burdens and limit competition.

Section 5: Investment

5.1 Do you agree with our assessment of investment in the UK mobile market and our priorities to secure future efficient investment?

Section five gives a clear account of the levels of investment that have taken place in UK mobile networks to date. Consumer Focus accepts Ofcom's analysis that the UK has seen levels of investment similar to that of mobile markets in the US and Europe, but is concerned that commercially driven investments have not delivered equally for all consumers.

As discussed further in section eight, the not-spots which remain in GSM mobile networks are unlikely to be eliminated by commercial investment, while the maps of 3G coverage produced by Ofcom in July 2009³ revealed the extent to which 3G networks are failing to provide coverage across large parts of the UK, particularly in Scotland and Wales. Consumer Focus urges Ofcom to conduct a further exploration of the options for addressing gaps in network coverage that are not likely to be tackled through further investment by mobile operators.

Consumer Focus notes the move by Vodafone to make Femtocells available to its customers for the first time, to boost indoor 3G mobile coverage. We believe it is right that consumers should be able to choose to purchase devices to improve their 3G coverage, but not, broadly speaking, from a position where coverage is unavailable without the device. We are concerned about the high cost of Femtocells (Vodafone's package costs £160 for a one-off purchase) and do not believe consumers should be meeting the cost of 3G network improvements by paying for additional hardware as a substitute for investment in networks being made by mobile operators.

² Decision 2007/53/EC of the European Commission (24 March 2004)

³ Ofcom 3G coverage maps:

http://www.ofcom.org.uk/radiocomms/ifi/licensing/classes/broadband/cellular/3g/maps/3gmaps/coverage_maps.pdf

Section 6: Consumer protection and empowerment

Q 6.1: Ofcom considers that regulatory intervention to protect and empower consumers continues to be needed in the mobile sector and that competition alone is not necessarily sufficient to secure this. Do you agree?

Q 6.2: We believe that the approach we take to consumer protection and empowerment in the mobile sector strikes the right balance between taking timely action when necessary, and the need to apply regulation only when effective and proportionate. Do you agree?

Q 6.3: Are there any areas relating to mobile services Ofcom is not addressing but which it needs to tackle in order to achieve its consumer policy objectives? Are there other areas where regulation could be scaled back?

The complex mobile market

Consumer Focus accepts Ofcom's analysis of consumer detriment in the mobile market, which notes that while high levels of satisfaction can be observed, persistent complaints and sources of dissatisfaction are reported by significant numbers of consumers. We believe that to a large extent, detriment affecting mobile phone consumers is due to the complexity of the mobile market.

As Ofcom notes in the consultation paper at 4.47, mobile price comparison website BillMonitor compares more than 100,000 separate mobile phone tariffs. For consumers, it can be challenging to make comparisons between the huge range of tariffs on offer, which combine various allowances of voice minutes, text messages and data usage, to determine which package will give the best value for money.

Often, information on terms and conditions, pricing and service is not presented in a uniform manner, which would make comparisons easier for consumers. Complex tariffs not only pose challenges for consumers, they also cause difficulties in assessing the impact of price increases over time, particularly on vulnerable consumers.

This complexity is added to by the additional charges that consumers may face, but which may not be factored into comparisons between the headline prices of different mobile tariffs. The lack of transparency around additional charges, as well as the lack of differentiation between mobile operators, are issues of concern to Consumer Focus. For example, all major UK operators charge for itemised paper billing and all employ rounding of monthly bills.

Increasingly, consumers are purchasing communication services, including mobile phones, fixed-line phones, digital TV and broadband, in bundles. Ofcom's most recent Communications Market report reveals that at the end of Q1 2009, 46 per cent of UK homes bought services in bundles, up 7 per cent on the previous year⁴. Trying to compare different bundled packages creates an additional complication for consumers, because of the multiple services involved, and Consumer Focus is concerned that consumers are not able to make informed cost comparisons between bundled packages.

⁴ Ofcom, *Communications Market Report 2009* (p.4)
<http://www.ofcom.org.uk/research/cm/cmr09/cmr09.pdf>

Figure 34 in the consultation paper shows consumers' opinions on the ease of making cost comparisons within each of the four communications services mentioned above. We would be keen for Ofcom to add to this by gathering evidence of consumers' views on the ease of comparing bundles involving two, three or four combined services.

One particular area of concern for Consumer Focus is the lack of transparency for consumers around the cost of calls to special-rate numbers. This includes numbers which are free from fixed lines, as well as those involving a non-geographic charge from fixed lines such as numbers beginning with 0845, which can incur considerably higher costs from mobiles. Many essential services are supplied to consumers via these types of numbers and Consumer Focus believes that the higher charges paid by mobile phone users to access these services may in many cases be unjustified. We welcomed BT's decision earlier in 2009 to make 0800 calls free to its mobile customers and intend to carry out further work to highlight the importance of consumers being subject to a fair pricing regime when accessing important services via their mobile phones.

Future developments in the mobile market look set to increase the importance of addressing tariff complexity and low price transparency in the sector. Consumers are increasingly using their mobile phones as substitutes for fixed-line phones, while new applications and services are adding to the functions consumers expect from their mobile. Given this likely direction of travel, Consumer Focus believes that the development of the mobile market must be underpinned by transparency and clear, accessible information to enable consumers to make informed choices.

The consultation paper details some of the work Ofcom is undertaking or has carried out to address low price transparency in the mobile sector, including its Review of Additional Charges and Price Accreditation Scheme for mobile price comparison websites. Consumer Focus believes these activities have contributed to addressing the complexity and lack of transparency which exists in the mobile phone market, but that considerable consumer detriment remains in this area. This consultation paper could have outlined further steps that Ofcom plans to take to tackle these issues, and urge further clarity to be given on future work in this area.

In addition, 6.47 outlines measures Ofcom believes mobile network operators could take to further consumers' interests in relation to price transparency and other areas. It is not clear from the consultation paper, however, what steps Ofcom plans to take in relation to these measures, or how industry compliances around such measures would be achieved. Greater clarity on these questions would be encouraged.

Consumer Focus recognises the challenges which exist around improving consumer experience in the mobile sector by making engagement in the market place clear and simple. We would welcome further dialogue with Ofcom on specific measures to achieve this.

Customer service and complaint handling standards

Consumer Focus believes that consumers suffer from a lack of accessible, comparative information about mobile network providers' levels of customer service. We are concerned that the absence of this information reduces incentives on suppliers to improve their customer service standards.

In January 2008, Citizens Advice Bureau published a report⁵ on consumer satisfaction levels with utility companies, including mobiles. More than 50 per cent of respondents to the CAB's survey reported being 'very dissatisfied' with their most recent mobile phone customer service experience. Consumer Focus' own consultation, *Mobile: What's the problem?*, also prompted high levels of complaints from consumers about mobile operators' customer service standards. Poor customer service was the second most commonly raised issue, with one consultation respondent commenting:

'The network is good and the prices very cheap, but their attitude over the actual phone was appalling.'

We believe that giving consumers access to comparable information about companies' customer service levels would be an important mechanism for prompting improvements in standards of service. Ofcom recently stated its intention to withdraw the TopComm Direction, which provided comparative Quality of Service data to consumers. Responding to Ofcom's consultation on the Topcomm Direction, Consumer Focus expressed a view that a replacement model should have been agreed before the Topcomm scheme was withdrawn. We are now keen to work with Ofcom to ensure that consumers have access to comparative information on customer service levels, to allow them to make informed switching choices based on these standards of service and to create competition between mobile operators around standards of customer service.

There is low awareness among consumers of mobile operators' complaint handling processes. Ofcom research reveals that less than 50 per cent of consumers know about communications providers' Codes of Practice for Complaints, while only 15 per cent are aware of either one of the two Ofcom-approved Alternative Dispute Resolution (ADR) Schemes operated by the Office of the Telecommunications Ombudsman (Otel) and the Communications and Internet Services Adjudication Scheme (CISAS)⁶.

Consumer Focus encourages Ofcom to ensure that consumers are able to gain resolution concerning disputes and complaints when things go wrong. We are aware that Ofcom plans to consult on whether providers should have to notify customers about their ADR schemes; our emerging view is that this would be a useful practical step which could be taken to address low consumer awareness of ADR.

⁵ Citizens Advice Bureau report, *Are You Being Served? CAB evidence on contacting utility companies* (January 2008) http://www.citizensadvice.org.uk/are_you_being_served

⁶ Ofcom statement, *Improving access to alternative dispute resolution* (May 2009) http://www.ofcom.org.uk/consult/condocs/alt_dis_res/statement/

Switching and access to information

Consumer issues around switching are discussed in more detail in section 4. We believe that the following factors can affect the ease with which consumers can switch mobile provider, or can act as a barrier in the switching process:

- increasing contract length and high contract termination charges may mean switching activity is less frequent
- if consumers are transferring their number from one mobile network service provider to another, long 'port lead times' (or the time it takes to transfer a phone number from one network to another) could put consumers off and discourage them from switching
- consumers can have difficulty in accessing reliable information about which network/package will be most suitable for them
- switching can be more complex if consumers are accessing services via bundled deals involving mobiles, fixed-line phones, digital television and broadband
- for some consumers, variations in providers' network coverage in their area will be an important factor in their decision over whether to switch

In order for consumers to be empowered to take advantage of competition in the mobile market they must be able to switch easily and to make choices on the basis of accessible, authoritative information. Consumer Focus encourages Ofcom to tackle current practices which operate as a barrier to the ease with which consumers can switch between mobile phone providers. We also look forward to providing input into Ofcom's recently published consultation on *Mobile Number Portability*.

Ofcom's regulatory approach

Consumer Focus believes that competitive pressures alone are inadequate for ensuring consumers in the mobile phone market are both empowered and protected from misleading or unscrupulous practices. We agree that Ofcom's role must continue to be in ensuring that mobile consumers are empowered and equipped with the right tools in order to get a fair deal.

Ofcom discusses the role that consumer law, self-regulation and co-regulation should play in its regulatory approach. Consumer Focus would support an approach which considers applying a broad range of regulatory measures tailored to tackle a particular area of consumer detriment, bearing in mind the limitations of consumer law enforcement and self-regulation and co-regulation as outlined in the consultation paper.

We would generally support a process of judging, on a case-by-case basis, whether individual issues of consumer detriment would be more effectively tackled through a range of measures including consumer law, self-regulatory or co-regulatory approaches, provided case-by-case assessments can be made quickly and effectively and are backed by graduated enforcement mechanisms.

We are concerned to ensure that – in instances where regulatory intervention is warranted and where consumer harm is occurring or might develop – Ofcom is armed with appropriate, enforceable regulatory powers to tackle problem practices and policies, and address these before they become systemic.

Outlining the complex issues which are emerging from changes in mobile applications, the consultation paper describes how a single service offered via mobile may be subject to different regulation depending on how it is delivered (p 90). This example raises broader issues around how regulation should adapt to these and similar changes, such as around frameworks for online protection, that are taking place in the mobile market. Consumer Focus believes there is a need to replace the patchwork of regulation which currently exists, intended for different media and different types of transactions, with an inclusive and forward-looking regulatory framework to keep pace with developments.

The Government's recent *Digital Britain* report highlighted an important role for mobile networks in the delivery of universal access to broadband. In this context, Consumer Focus is keen to stress that the market also needs to be viewed in terms of essential service delivery, with the safeguards that are necessarily attached to this.

Section 7 – Access and inclusion for disabled and vulnerable citizens

Handsets

Consumer Focus welcomes Ofcom's emphasis in this consultation paper on access to mobile phone handsets for disabled consumers. We are concerned that the mobile market has failed to deliver sufficiently accessible, innovative handsets for disabled consumers, despite the continuing increase in mobile phone use in the wider population. Ofcom notes its intention to examine this as part of its wider review of issues facing disabled people; we would support moves to draw on the expertise held by specialist disability groups and suggest that a summit of stakeholders is an appropriate way of highlighting the importance of these issues.

Ofcom's recognition of the higher standards required of mobile handset manufacturers by the US Federal Communications Commission, relative to those in Europe, is welcome. Along with its intention to discuss FCC guidelines with the mobile operators and raise it as an issue as part of the Radio and Telecommunications Terminal Equipment Directive Review, we urge Ofcom to explore support for the adoption of US standards at EU level with its fellow regulators in Europe.

As mentioned in section 3, evidence gathered by Consumer Focus' consultation *Mobile: What's the problem?* highlighted a broader desire among some consumers for simpler, easier-to-use handsets incorporating fewer converged functions. Screen size, button size and ease of interface were highlighted as accessibility issues affecting a broader range of consumers than commonly assumed. As one consultation respondent commented:

'If possible, make the letters and display bigger and easier to read too. I can't read texts half the time. I am not the only person who has difficulty with this: I have watched friends and relatives in their 40s and 50s struggling.'

We would also add that a focus on screen design is important. As consumers are offered an increasing range and variety of applications for their mobile phones, suitable screen design will be crucial for consumers to access new functions and services in a secure, informed way. The presentation of information such as of terms and conditions, warnings and privacy policies are harder to absorb via a small screen, while the consultation paper notes (p.111) that consumers who have problems with literacy find using a mobile phone challenging because of the amount of text on the screen.

SMS-only tariffs and SMS emergency services

While we are pleased Ofcom found that the mobile network operators offer SMS-only tariffs, it is clear that awareness of these tariffs among consumers is low, while problems may also exist around mobile provider staff members' knowledge of these tariffs. We urge Ofcom to explore work it could conduct in partnership with disability groups to raise awareness of these tariffs.

Consumer Focus looks forward to the results of Ofcom's trial of SMS access to emergency services.

Customer service

There appears to be a discrepancy between Ofcom's research, which has found no direct evidence of systematic failure in customer service attitudes to hearing-impaired consumers, and the views of some stakeholders who report mobile providers' customer service staff showing a lack of understanding of the needs of hearing-impaired users. The latter view was expressed in the response to Consumer Focus' mobile phone consultation of one group advocating on behalf of deaf and hearing-impaired users, who said:

'Many of our members and other deaf and hard of hearing people...depict a lack of deaf awareness amongst customer facing staff in sales and support departments. Overall, many of the customer interactions are described as not very accessible to deaf and hard of hearing people, and our constituents often feel that they are not treated with enough respect.'

As well as commencing with its stated intention to monitor this issue, Consumer Focus suggests that Ofcom engages with those groups who contacted them to raise this problem during the first Mobile Sector Assessment consultation, to gain a clearer picture of the problems being encountered by hearing-impaired mobile consumers and take appropriate action as a result.

Text relay service

We support Ofcom's intention to review the Text Relay system. Calls for an upgrading of the Text Relay service have been widespread and are clearly felt to be overdue by some advocates for deaf and hearing-impaired consumers.

Cost implications for disabled consumers

Consumer Focus is keen for Ofcom to consider cost as a barrier for disabled and vulnerable consumers. There are an estimated 10 to 13 million disabled people in the UK; just under 9 million have a significant degree of hearing loss and about 2 million people have sight problems. Disabled adults of working age are twice as likely as those without a disability to live in income poverty⁷. Consequently, significant issues arise around the choice and affordability of mobile tariffs for disabled people that must be tackled.

Low income consumers frequently have a limited choice of products and services. Those on low incomes are more likely to have to use pay-as-you-go mobile phones, and Consumer Focus is concerned that they may be receiving less value for money relative to contract mobile phone users. The amount of minutes, texts and data included in providers' typical contract packages has seen large increases in recent years.

⁷ Consumer Focus report, *The Digital Divide* (May 2009) available at www.consumerfocus.org.uk

Ofcom's first mobile sector assessment consultation paper notes that in terms of value for money, the trend in mobile contracts is that consumers are receiving greater value, while pay-as-you-go customers are receiving 'same for same' with prices staying roughly flat. The report raises a concern that the benefits of growth and development in the mobile sector have not been evenly distributed among customers, with contract consumers faring better overall than those on pay-as-you-go⁸.

Some additional charges imposed by mobile operators apply to pay-as-you-go mobile users but not contract customers. For example, the four largest mobile operators all charge pay-as-you-go customers for calls to customer service helplines, whereas these calls are free to those using mobiles on contract agreements⁹. Consumer Focus is keen to ensure that those consumers who choose pay-as-you-go because they are less able to afford monthly contract fees do not lose out on the increased benefits being enjoyed by contract customers.

Home broadband use is lower among people on low incomes: 77 per cent of people living in households with an income of more than £30,000 have broadband compared with only 28 per cent of people in households with an income of up to £11,500¹⁰.

For those whose only means of accessing the internet is via a mobile phone, higher charges are likely to be incurred for this mobile access than would be the case for accessing the internet using a connection in the home. Further, consumers on low incomes using pay-as-you-go rather than contract mobile phones are likely to incur higher charges for internet use and downloading.

Consumer Focus set out extensive comments on access to broadband among vulnerable consumers in our May 2009 report *The Digital Divide*. This paper, which is available via our website www.consumerfocus.org.uk, highlights the divide between those consumers who can and cannot afford broadband.

⁸ Ofcom, *Mobile Citizens, Mobile Consumers* (p.3)

<http://www.ofcom.org.uk/consult/condocs/msa08/msa.pdf>

⁹ Information on call charges available from operator websites.

¹⁰ Ofcom, *Access and Inclusion – digital communications for all* (March 2009)

http://www.ofcom.org.uk/consult/condocs/access/access_inc.pdf

Section 8: Coverage

Q 8.1: Do you agree that our proposed facilitation role around mobile not-spot issues is a realistic and sensible thing to do?

Q 8.2: Do you agree with our general approach set out in the table above? Are there any other actions we should take and why?

Evidence of consumer detriment

Consumer Focus' research has highlighted poor mobile network coverage as one of the most significant causes of consumer detriment in the mobile phone sector. Poor mobile network coverage was the issue most commonly raised by consumers in response to Consumer Focus' recent consultation *Mobile: What's the problem?*; coverage was cited as a problem in more than a quarter of all responses. The following comments were made by respondents to the consultation:

'Many of the valleys in the Scottish Borders get poor reception. One considerable problem is that there are many providers in the Scottish Borders but none of them covers the whole region. It is silly to have so many companies and masts on every hill but no single mobile phone that can be used in the region.'

'We are trying to make Orkney an attractive place to live and to do this we need all the services which a modern society expects, which includes mobile phone coverage.'

Concerns with poor network coverage were also highlighted by the online panel research conducted by Consumer Focus. When respondents were presented with a list of issues to be prioritised, 'uninterrupted coverage and reception' arose as a key consumer priority.

Coverage in rural communities

Problems of poor mobile network coverage and 'not-spots' have a disproportionate effect on consumers in rural communities. As noted in Ofcom's most recent *Communications Market Report: Scotland* publication, only 68 per cent of postcode districts in Scotland have 2G coverage from one or more operators, while only 39 per cent have 3G coverage¹¹. The situation is similar in Wales, where 39 per cent of postcode districts have 3G coverage from one or more operators¹². The Communications Consumer Panel pointed out in its response to the Government's Digital Britain report that:

'There is an unacceptable gap between official data, according to which 2G coverage is near universal, and the reality experienced by consumers, which is that there are a great many not-spots and areas where the quality of coverage is poor.'¹³

¹¹ Ofcom, *Communications Market Report: Scotland*

<http://www.ofcom.org.uk/research/cm/cmnr09/scotland/cmnrscot.pdf>

¹² Ofcom, *Communications Market Report: Wales*

<http://www.ofcom.org.uk/research/cm/cmnr09/wales/cmnrwales.pdf>

¹³ Communications Consumer Panel, *Response to Digital Britain final report*

<http://www.communicationsconsumerpanel.org.uk/Response%20to%20Digital%20Britain%20final%20report.pdf>

Consumer Focus shares this concern and believes that far more consumers, in more densely populated areas of GB, are affected by poor network coverage than official coverage figures would suggest. We are aware that postcode districts are classed as being 'covered' if 90 per cent of the area or population (depending on which of these measurements is being used) of that district receives coverage. In some cases, particularly involving larger rural postcode districts, the remaining area of up to 10 per cent, in which gaps in coverage may be observed, can represent a large area in real terms. Consumer Focus believes Ofcom should consider whether setting 'universal' coverage at 90 per cent is contributing to the discrepancy between official coverage figures and consumers' actual experiences of mobile network coverage¹⁴.

While consumer dissatisfaction with poor mobile services is common in areas suffering from gaps in coverage, other tangible forms of consumer disadvantage can be seen. A Scottish Consumer Council report, *Making markets work for consumers in Scotland*, published in 2008, found that low levels of coverage across large areas of the Highlands and Islands had clear implications for the ability of mobile consumers to switch mobile provider. As well as this negative effect on exercising choice in the market, the report noted that the lack of coverage could have the further effect of lowering the take-up rate of new mobile technology¹⁵.

With the accelerating take-up of mobile broadband and the rapid expansion of mobile applications and services, consumer demand for access to these services in rural areas is set to increase. At the same time, the divide between rural areas lacking in access to 3G networks (as well as 3.5G and 4G networks in future) and those areas with access will continue to widen unless ways are identified of addressing the not-spots that currently exist. It is not only important that consumers in all areas have access to some form of service, but they should also have access to a range of providers to ensure there is competition between providers and a choice of services for consumers.

Tackling poor mobile network coverage

Consumer Focus does not believe that commercial forces are likely to address remaining not-spots in mobile operators' 2G networks to a significant degree. We therefore call on Ofcom to exhaust alternative options for delivery to not-spots and where not-spots still exist, to compare solutions to coverage problems in other countries and recommend a range of options based on these. Significant public initiatives that have taken place in other countries have not been about subsidies or inducements, but rather a recognition that some public infrastructure needs have to be supplied publicly.

Consumers should be able to check whether their mobile phone will work in a particular area before signing up to a potentially long mobile contract. Efforts to produce an effective, independent mobile coverage comparison site have so far proved unsuccessful. Consumer Focus would welcome the development of a meaningful, robust comparison coverage checker in order for consumers to draw comparisons between the different mobile providers. As mentioned above, we have concerns about discrepancies between official coverage figures and those experienced in reality by consumers. We call on Ofcom to verify coverage figures to supply an accurate picture of the situation faced by consumers.

¹⁴ We note that in Ofcom's 2009 *Communications Market* reports, the threshold for coverage of postcode areas is set at 90 per cent, whereas previous reports used the figure of 75 per cent. Consumer Focus welcomes this change but believes the threshold should be raised further, as set out above.

¹⁵ Scottish Consumer Council report, *Making markets work for Consumers in Scotland – everyone benefits* (April 2008)
<http://scotcons.demonweb.co.uk/publications/reports/reports08/rp05swit.pdf>

The *Digital Britain* report highlights 3G technologies as a way of delivering broadband access to areas that are too remote from main exchanges to receive cabled broadband services. Recent maps of 3G coverage produced by Ofcom revealed the extent to which Wales, Scotland and some parts of England lack 3G network coverage, and consequently the challenges that exist in supplying universal broadband. We do not propose to discuss in detail here the issues which exist around the provision of a universal broadband service as set out in *Digital Britain*. However we will follow the process closely and look forward to contributing to future consultations where relevant.

Section 9 – Mobile content

Question 9.1: Are there any additional issues about mobile content and accessing content via mobile that should be considered?

Question 9.2: We have set out some differences between accessing content via the fixed internet and via mobile. Are there any further differences?

Limited information disclosure on small mobile screens

As mentioned previously, small screen displays can present barriers for consumers using mobile phones to access applications and services. Limitations exist on the information that can be conveyed via small screen displays, compromising consumers' rights to information disclosure. This could lead to a failure to communicate important information, such as on service providers, access to dispute resolution, information about goods and services and details about the transaction such as terms, conditions, costs and payment method. Consumers must be able to gain clear, straightforward access to all the information they need to make fully informed purchases and interactions using mobile devices.

Data security and privacy breaches

The ability to use mobile devices as payment wallets creates risks from inadequate protection for unauthorised purchases. In addition, privacy may be compromised by the use of purchase and location tracking technologies and sharing personal data with third parties without consent. The OECD Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues highlighted concerns over limited information disclosure, data security and privacy breaches and the protection of children and minors¹⁶.

Similarly, the exploratory Trans Atlantic Consumer Dialogue (TACD) survey on mobile commerce conducted in 2006¹⁷ reported that 38 per cent of survey respondents had experienced problems with mobile commerce. Areas of particular concern were reporting problems and complaints handling, limited information disclosure, unauthorised use of personal information, data security breaches and privacy risks. Consumer Focus is concerned that mobile security is less robust than other forms of online security, while the potential for fraud is greater.

¹⁶ Mobile Commerce OECD Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce, Korea 2008

¹⁷ TACD Mobile Commerce Survey, 2006

Protection of children and minors

Developments in the capability of mobile handsets to provide access to an expanding range of audio-visual content raise important issues around the protection of children using mobile phones. A lack of effective age verification technologies has allowed ways for children to access harmful, adult or illegal content, as well as to engage in commercial transactions which pose financial risks.

In addition, there are safety and security risks associated with the use of location tracking technologies popular with children. Consumer Focus urges Ofcom to investigate improvements in the age verification processes that are used to access age-restricted mobile content, and to consider whether enough information is available to parents about the use of network filters for web content on mobile phones. We also urge Ofcom to work closely with the UK Council for Child Internet Safety as it implements the recommendations of the Byron Review, to ensure that issues around child safety are fully considered.

Advertising practices

Consumer Focus is concerned that increased mobile commerce could lead to a rise in consumers' exposure to unsolicited and deceptive advertising, where products and services may be misrepresented by fraudulent vendors. In particular, children's exposure to aggressive advertising is likely to be an issue of increasing concern. Of the respondents to the TACD mobile commerce survey mentioned above who had encountered problems related to mobile commerce in the last 12 months, the problem most frequently cited (by 35 per cent of consumers) was that the cost of goods or services was inaccurate or misleading¹⁸.

Ofcom's regulatory approach to mobile content

The issues described above are all significant challenges for Ofcom, given the inevitable movement towards greater consumption of mobile content by users. They will require industry co-operation in building robust privacy and security measures and setting standards to provide adequate protection. We welcome the research that Ofcom commissioned last year which addressed the effectiveness of the UK Code of Practice for self-regulation and the Classification Framework for mobile content, and look forward to the results of the quantitative research Ofcom is conducting with parents and children around access to mobile content. This information will be a valuable asset to wider analysis about whether the existing self-regulation framework is delivering for consumers.

Rapid growth in the range of mobile content available to consumers, as well as the changing ways in which this content is accessed, create new forms of consumer detriment and highlight the need for consumer confidence to be maintained in new forms of mobile interactions. Given these developments, Consumer Focus believes that a self-regulatory approach to mobile content may not remain effective. Taking in to account the concerns laid out by Ofcom, we feel that both sets of research mentioned above, or similar, should be conducted annually to assess the effectiveness of the self-regulated code and consider alternatives if consumer detriment grows.

¹⁸ TACD Mobile Commerce Survey, 2006

Consumer Focus response to Ofcom Mobile sector assessment second consultation

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