

Improving access to electronic communications services for disabled people

Response from PhoneAbility to Ofcom's Consultation Document

PhoneAbility welcomes the opportunity to contribute to Ofcom's consultation. We would make it clear that PhoneAbility is not a 'single disability' charity, being concerned with the matter of access to telecommunication services by people with disabilities of any kind, as well as by elderly people who have functional or comprehension difficulties that limit their use of telecommunication services.

While welcoming any constructive approach to the task of improving accessibility for these client groups, we have questions about the strategy of Ofcom's present proposals. The General Conditions which Ofcom is seeking to amend have their roots in the past, with some dating back to the days of Post Office Telephones. The telecommunications scene has changed dramatically over the years, particularly – as the document points out – since 2003, when a new legislative framework was introduced. The role of the Communications Provider has altered significantly as a result. Also, over that time, the way in which matters relating to discrimination and equality in the provision of services (of all kinds) has undergone a massive shift. The approach is now much more general and mainstream, with a declaration of basic principles rather than reliance upon a set of prescriptive (and therefore parochial) rules.

With this in mind, we would hope that Ofcom could separate those issues which are specific to telecommunication services from the wider picture, which encompasses all forms of service provision and observes discriminatory actions as part of that broader canvas. The consequence, if that distinction is not made, is that telecommunications will be seen as a separate entity when it comes to matters of discrimination and equality, having its own rules which do not equate to those of the service sector in general. There are people who hold that the Equality Act does not apply to telecommunications, because telecommunications has its specific rules, and there are signs that this view (which we hold to be incorrect) is damaging the prospects for achieving greater equality in access to services. We would like to see the advances in equality that are being derived from the mainstream approach also being applied in the telecommunications sector. Specific regulations, for example through GC15, would then have a place only where the sector conditions were so complex and atypical that the general obligations could not be applied as a matter of course.

We appreciate that many disabled people see an advantage in the use of specific regulation in that it does not require separate civil law cases to be initiated in order to establish the legal obligations. However, it does not follow that regulation is quicker, as recent events have shown, nor even more definite. The nature of the present consultation shows that the boundaries of proposed regulations are subject to discussion and challenge, whereas the case-law of equality findings is potentially exportable to other similar but not precisely identical situations.

We would not like to see a situation where sector regulation competes with equality law. The consultation paper (in section 3.14) refers to measures being complementary to the Equality Act 2010, but we do not see how this can be. If the regulations mirror equality law exactly, they are redundant, while if they lag behind it the impression is given that unreasonable adjustments are being asked for under the Act. If the regulations attempt to go beyond equality case-law, that may indeed serve to move the law forward (although with the risk that Ofcom will be challenged on the grounds that it is exceeding its powers). It could also lead to short-term expedients which obstruct longer term refinement, as evidenced by the current debate on the funding of relay provisions (which many would argue is properly the province of the network operators' business customers and not a matter for the networks themselves). We suggest that, if telecommunications sector regulation takes a different path from that of mainstream equality law, it can only store up troubles for the future.

In summary, we suggest that Ofcom should undertake the task of establishing which of the access obligations, as set out in GC15, are really telecommunications-specific, and which could and should be addressed by mainstream equality law. A most useful subsequent objective, if it is compatible with Ofcom's legal remit, would be to work with other official bodies to bring any necessary legal cases on behalf of people suffering discrimination. In that way, the equality case-law could be developed in support of disabled people (and indeed other groups) and Ofcom's obligation to protect consumers would be discharged.

PhoneAbility does not have the specific sets of data needed to answer the consultation questions adequately, and in several cases we believe that those data sets do not exist. Much of the evidence of need is anecdotal or self-selected, and although we have no reason to dispute it, it does not count as assured evidence. We have anecdotal evidence ourselves, and will use it - in a few examples - to show that the proposed changes to GC15 need to be considered more broadly.

Accessible bill formats

Ofcom argues that the requirement to provide bills and other critical information in accessible formats should not be limited to stated disability groups. While we agree with this, we go further and contend that it should not be limited to disabled people. Elderly people with some impairment of sight, but not such as to constitute disability, might wish to have large-print bills and they have a right to request them under the equality obligations. People who do not have good command of English can ask to have documents in other languages; the obligation to provide them is related to what is reasonable given the size of the company and not to the status of the customer. A regulation under GC15 might be useful in showing what types of accessible format are reasonable, except that this cannot be done as it must take account of the resources of the provider. We suggest that Ofcom should consider dropping this rule and replacing it with Guidance, which would not then have the effect of limiting the application of equality laws.

Third Party Account Management

We acknowledge that this is a difficult problem but we do not think that Ofcom is being helpful. There are very many people, not necessarily disabled in the formal sense, who require the help of a friend or carer in managing financial matters. It is commonplace for a friend or relative to be asked to speak to the bank or a utility, on behalf of an elderly or sick person who cannot cope with a crucial telephone call. This inability to cope may result from confusion, incipient dementia, a temporary indisposition or a hearing or speech impairment which is too slight to be considered as a disability. The options to deal with this problem range from a formal legal appointment of a third party entitled to act, to an entirely informal agreement that involves disclosing personal security data so that the task may proceed. An Ofcom regulation is redundant for the former, and arguably unwise for the latter. We question whether Ofcom has found a middle way that allows of third party representation without risk to any of the parties involved as a result of the necessary disclosure of security information. If so, this should be shared with other sectors because the difficulty is by no means limited to telecommunications or to people who would usually be classified as disabled. This does seem to us to be a most conspicuous example where a mainstream approach is called for.

Application to Broadband

Ofcom proposes to extend certain legacy obligations, originally drafted in the days of fixed line narrowband services, to mobile and broadband. This cannot be done under the Universal Service provisions because, as the European Commission confirmed some 12 months ago, these provisions are confined to fixed line narrowband services. Ofcom is proposing to make use of Article 23a, which is in the 'Users' rights' section of the Directive and not the 'Universal service' chapter. However, the proposal will still be subject to the Commission's often repeated warning that Member States may not impose on their telcos any financial burdens

that go beyond the legitimate costs of regulation. This point could be by-passed if Ofcom used the equality argument. From an equality viewpoint, the manner of service delivery has no bearing; the size of the provider and its ability to make reasonable adjustments are all that matters once the case has been brought. The mainstream approach avoids the distinctions contained in the EU Framework Directives. We may note that there is no EU equivalent to the UK's Equality Act so that particular strategy was not available to the authors of the EU Directives. It appears to us that the United Kingdom has available a powerful driver towards equality in service provision, that avoids the problems of the confining boundaries that are inherent in the Framework Directives. These boundaries result from the definition of a particular instance of the Single Market, whereas the difficulties faced by users in the scenario under consideration often cross market boundaries.

To emphasise this point, we can look at Ofcom's cogent arguments for securing improved access to broadband services. As the consultation paper acknowledges, the reasons for relatively low usage of internet services amongst certain potential user groups are not known. It may be due to barriers of a discriminatory nature, or it may be a matter of personal choice. The choice may be driven, in these groups, by cultural or economic considerations. We agree that it is important to gather more information, so that a proper analysis may be made. If as a result it is found that there are discriminatory barriers, it is still vital to distinguish between those that Ofcom is empowered to resolve, and those others which are of a more general nature. If, for example, a user has difficulties in utilising the facilities of a website, it may be because the architecture and content management of that site make it inaccessible for that person, rather than the result of problems in actually making the connection. The difficulties may also arise from limitations in the user's own terminal equipment. In a multi-dimensional situation such as this, it seems to us that Ofcom's ability to resolve problems through the use of regulation is likely to be very limited, so a more holistic approach is called for. We would certainly support any proposals to develop such an approach and, if this necessarily extends beyond Ofcom's remit, we would additionally argue for a multi-agency project.

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