



8 March 2011

Colette Bowe
Chairman
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Dear Colette

Ofcom Draft Annual Plan 2011/12

I am writing to you to set out the Communications Consumer Panel's response to Ofcom's Draft Annual Plan 2011/12.

Defining intended outcomes

The panel particularly welcome Ofcom's intention to identify the "clear and positive outcomes" that it is seeking to secure for citizens and consumers through the fulfilment of its strategic purposes. We have advised Ofcom repeatedly - across a range of policy areas - to be clear about the outcomes that it is seeking to achieve and to do so in terms of the benefits that consumers and citizens can expect to receive. We also made this point to Ofcom in advising on earlier versions of this Draft Annual Plan.

The high-level outcomes set out in paragraph 3.17 are an important start, but need to be accompanied by more specific consumer and citizen outcomes for each work area. We also want to see clarity about how progress towards those outcomes will be measured. We recognise that Ofcom has outlined the outcomes that it is seeking to achieve in relation to many of the proposed work areas, but particularly in relation to spectrum-related activities, there is still room to do more. For example, under the strategic purpose of "promoting the efficient use of public assets" Ofcom sets out plans to auction various bands of spectrum, but fails to mention the intended outcomes for consumers and citizens. Auctioning spectrum is not an end in itself and Ofcom should actively think about the interests of consumers and citizens, including particular groups of consumers and citizens, such as those who live in rural areas. This is something we have been working on with the Spectrum Policy Group and we hope therefore that it would be relatively easy to define more specific consumer and citizen outcomes. Without such outcomes, there is a risk that Ofcom will fail to explicitly identify the

trade-offs involved in deciding whether, for example, to impose coverage obligations when disposing of spectrum.

Choosing priorities

We think that it would be helpful for stakeholders responding to future draft annual plans, if Ofcom could explain how it has decided upon its strategic purposes and its priorities for the year ahead, and specifically set out which issues it has decided not to address. We recognise that Ofcom has set out some very useful, evidence-based analysis of the experiences of consumers and citizens, and of developments in the sector more generally. But in future, we would like to see Ofcom linking this analysis more directly to the choices it has made about strategic purposes and priorities for the year ahead.

Panel views on priorities

During the next financial year, the Panel will continue to advise Ofcom to help ensure that the interests of consumers are properly reflected in Ofcom's decisions. So here we will limit our comments to a few issues where our views might have a bearing on the final Annual Plan for 2011/12.

First, we welcome the fact that improving the ease of switching between communications providers will continue to be a priority. We welcome in particular Ofcom's recognition of the need to ensure that there are no undue process barriers to switching both single services and bundles. As we have stressed repeatedly, we think it is extremely important that new switching processes are designed to be fit-for-purpose both now and in five years' time, by which time even more consumers will be buying bundles of services. This makes it vital that the timetable for the switching review, including the planned work on mobile and pay TV switching processes, does not slip. Indeed, we would like it to be accelerated if at all possible.

We note the planned work to take into account the costs of moving from the current processes to new processes. In assessing whether the costs outweigh the benefits, we think that Ofcom should be clear about the counterfactual, i.e. what would be the impact on consumers over the next few years if the switching processes were not changed. In other words, it would not be appropriate to just weigh consumer satisfaction now against the costs of change.

Secondly, the Panel is sceptical about the intrinsic value of providing information to consumers about traffic management, broadband speeds and mobile coverage. As the Panel has said before, Ofcom should start by establishing how consumers make decisions and the role which information plays before jumping to the conclusion that more information will help. Even where information is useful to consumers it is unlikely to be sufficient to deliver all the appropriate outcomes. For example, transparency about traffic management policies is unlikely to deliver a guaranteed minimum quality of service such that consumers can use online public services reliably, not least because traffic management information is very unlikely to be the only or primary driver of decisions about broadband.

The Panel think that Ofcom is in danger of starting with the remedies that it has the power to impose, rather than starting by identifying the problem that needs to be addressed and identifying the right mix of solutions and indeed the right mix of players, including other

regulators, industry and Government. We would like to see Ofcom looking at the technical means of delivering a minimum quality of service obligation, alongside work on transparency. We think that this will help Ofcom to be ready when the time comes, as we think it will, when quality of service obligations become necessary.

Thirdly, we note that work to improve mobile coverage is no longer the priority it was. The remaining work is also described more narrowly in terms of “continuing to promote investment” that will address mobile not-spots. Elsewhere in the Draft Annual Plan, Ofcom sets out its criteria for deciding which issues to address, which include, “Can we make a difference for consumers or citizens by using our statutory powers or our soft powers, such as technical expertise and indirect influence?” We think that mobile coverage is an issue where Ofcom could use its “soft powers” to significant effect. So we do not want to see Ofcom downgrading its ambition in this area. We think with sufficient commitment it ought to be possible for Ofcom to make progress with, for example, its objective of facilitating improved coverage for consumers as they travel around the country, particularly by rail.

Fourthly, it is vital that Ofcom’s choice of priorities is rooted in a clear and comprehensive picture of how consumers’ and citizens’ needs are changing. So the Panel welcomed section two of the Draft Annual Plan, which describes the experiences of consumers and citizens in the communications sector. We would not want Ofcom to compromise in this area, although we recognise the need to make substantial cost reductions. In fact, we would like to see a stronger focus on the issues that are likely to affect consumers in the future. To this end, we think that the Consumer Experience report could be enhanced by some more forward-thinking analysis. Given the length of time that it can take to make changes to the regulatory framework to, for example, improve switching processes to reflect increased bundling, it is vital to be able to anticipate how market developments will affect consumers. Having a clearer sense of how the future is likely to unfold could enable Ofcom to make more strategic interventions and avoid expending resources on fixing problems that are likely to be superseded in importance.

Fifthly, the Panel’s remit includes small businesses with up to 10 employees. We welcome Ofcom’s commitment to identifying and addressing the interests of small businesses, as reflected in the publication of the first Business Consumer Experience report. But we are concerned that although small businesses are protected by sector-specific general conditions, they do not benefit from general consumer law. We suggest that in thinking about how to address the findings of the business experience research, Ofcom should review whether this gap in the legal framework means that small businesses suffer detriment.

Consumer advocacy in the communications sector

Finally, we note Ofcom’s intention to dissolve the Panel, subject to the amendment of the relevant provisions of the Communications Act 2003. In the meantime, the Panel will continue to do its best to represent the interests of consumers in the communications sector, subject to having the resources necessary to do so. The Panel’s work will include addressing the interests of those consumers who are more vulnerable, such as older and disabled people. The Panel has recently published a research report examining how mobile phones could be made easier to use, for consumers in general, and for older and disabled people in particular. We hope that Ofcom will be able to build on this report as part of its work to fulfil its duty to promote easy to use equipment.

Looking to the future, the Panel thinks it is vital that there is an independent voice speaking for consumers in the communications sector. It is true that Ofcom is now more focused on the needs of consumers than in years gone by, but there is still room for improvement, as the recent report by the Public Accounts Committee showed. And there is certainly no room for complacency.

An independent consumer advocate must have a dedicated staff and a separate budget, with the freedom to set its own priorities and carry out research to underpin its advice. Crucially, it must be able to focus on the issues that matter to consumers in the communications sector, regardless of whether they fall within Ofcom's remit. For example, the Panel is currently carrying out research into consumers' views on how their personal data is collected and shared online, an issue that Ofcom does not have the powers to address, but which has significant implications for consumers and citizens, and indeed for the policy and regulatory framework within which Ofcom works.

In contrast, advisory committees that are part of Ofcom's internal governance structure will never be sufficiently independent to be able to perform the role of consumer advocate effectively. In particular, they will be limited to providing advice on the issues that Ofcom has chosen to address.

The Panel is clear, therefore, that its functions will need to be transferred to an independent advocacy body in due course. We will continue to make this case to Government in the context of its review of the consumer landscape.

I look forward to your response.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Anna Bradley', with a stylized flourish at the end.

Anna Bradley
Chair, Communications Consumer Panel