



# Citizens, Communications and Convergence

A summary of stakeholder responses, and our next  
steps

Statement

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## Section 1

# Executive summary

- 1.1 In July 2008, we published a discussion document setting out Ofcom's role in furthering the interests of citizens. This statement provides a summary of responses to that discussion and an outline of steps Ofcom will take to ensure a more transparent and consistent approach to furthering the interests of citizens.
- 1.2 Although in practice our thinking has been driven by a citizen focus since Ofcom's inception, the absence of a clear explanation of how the furthering of citizen interests is incorporated into our decision-making has led some stakeholders to question our commitment to the needs of citizens.
- 1.3 Our approach, as set out in the July 2008 discussion document, is based upon a consideration of what is involved in performing the roles of citizen and consumer. As consumers, we participate in the marketplace, buying or using goods and services. In short, we focus primarily on what is good for ourselves as private individuals or businesses. Whereas, as citizens, we participate in society, which includes the marketplace, but also extends far beyond it. Citizens are free to exchange goods and services, but can additionally be impacted by a whole range of social, cultural and political activities that are not the subject of commercial contracts.
- 1.4 Most respondents acknowledged the tension we highlighted, which can exist between the interests' of consumers and those of citizens, and the context-specific nature of the task we face. Where tensions exist between citizens' and consumers' interests we have a duty to expose those tensions in order that we can be held accountable for how we reach a resolution. We believe that the framework set out in the discussion document represents a pragmatic approach which can be applied to most situations where Ofcom has to identify the interests of citizens when appraising policy options, and resolve any tensions which exist.
- 1.5 We committed, in the discussion document, to incorporate the approach we have taken to furthering citizens' interests into revised internal guidelines, used by managers when appraising policy options. However, we now propose to go further by reviewing also the role of discrete toolkits, which currently cover issues such as diversity and equality, as well as citizen and consumer interests, with the aim of developing a single guide to policy appraisal for Ofcom managers. Responses to the discussion document will also be reflected in this revision.
- 1.6 Respondents helpfully also drew our attention to a number of areas where an increased awareness of the impact of policy on the interests of citizens was important, for example in the promotion of next generation access. We have passed these suggestions to colleagues who are leading in the relevant areas.

## Section 2

# Introduction

- 2.1 Under the 2003 Communications Act (the “Act”), it is stated “it shall be the principal duty of Ofcom, in carrying out their functions:
- a) to further the interests of citizens in relation to communications matters; and
  - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition”
- 2.2 This dual role in furthering the interests of citizens and consumers has always been at the forefront of Ofcom’s aims and activities.
- 2.3 Citizen-focused work can be extremely varied. The licensing of community radio stations, the promotion of media literacy, the protection of television participants with regard to fairness and privacy, the promotion of digital inclusion, and the prevention and removal of radio interference to the emergency services, are just some of our important citizen functions.
- 2.4 Defining what is a citizen interest, as distinct from a consumer interest, is a dynamic, context specific and sometimes debatable task. At times there can also be conflict between the interests of citizens and the interests of consumers, and here difficult decisions often need to be made.
- 2.5 In order to explore this issue further, and in response to stakeholder interest, on 11 July 2008 we published a discussion paper explaining, and exploring our work from the citizen perspective. We proposed to make more explicit how we address citizen interests in our policy process through a forthcoming revision of our guidelines on Ofcom’s approach to policy evaluation.
- 2.6 In total, we received 25 responses to the discussion paper, from a broad range of stakeholders. We received comments from industry groups, consumer groups, interested members of the public, commercial organisations and academics. A full list of respondents is available at Annex 1.

### The structure of this document

- Section 2 provides an overview of what we said in the discussion paper.
- Section 3 summarises the responses that we received to the discussion paper.
- Section 4 sets out our next steps.
- Annex 1 lists the respondents to the discussion paper.

## Section 3

# Overview of our discussion paper

- 3.1 Our July 2008 discussion paper sought to discuss and clarify Ofcom's role in furthering citizen interests.
- 3.2 In doing so, it started by defining citizen and consumer interests, considered the duties we hold to further citizen interests, and finally, focused on Ofcom's application of citizen and consumer interests in practice. For the sake of simplicity, let us now consider the main points the paper made under these same themes.

## Defining citizen and consumer interests

- 3.3 In the discussion paper we revisited the debates undertaken in determining Ofcom's duties at the time of the Communications Bill. In what was a long and hotly debated process, it was decided that Ofcom should have two principal duties under the Act (see paragraph 2.7).
- 3.4 Our interpretation of duties has remained consistent across our lifetime, but our use of language has changed. Initially, we attempted to use the phrase 'citizen-consumer' to ensure that when considering issues we captured both citizen and consumer perspectives. In the paper we then went on to explain that this initial phrasing caused confusion for, and drew criticism from, some stakeholders. This criticism risked diverted attention from the important policy issues being considered. In the time since, we feel that we have moved towards a better description of how we further consumer and citizen interests.
- 3.5 Defining citizen and consumer interests in general terms, and then separating them, is a difficult task. In the paper we described consumers as being active "in the marketplace, buying or using goods and services". Extending this, we then went on to describe citizens as participants in "society, which includes the marketplace, but... [who] are also free to participate in a whole range of social, cultural and political activities that are not the subject of commercial contracts."
- 3.6 As the roles of citizens and consumers are often intertwined, we then went on to try and describe them more clearly by using some examples. One example, the use of a mobile phone, shows how people who have commercial contracts with service providers are consumers. Yet, the use of a mobile phone has important citizen benefits such as enhanced personal safety and enabling active participation in society.
- 3.7 Considering Ofcom's role in furthering the interest of citizens we identified three key requirements:
  - i) access to services;
  - ii) content and the skills needed to participate in society; and
  - iii) appropriate protection.
- 3.8 We acknowledged that these requirements can often be delivered by the market; but when the market cannot deliver those outcomes then regulatory intervention may be required.

## Duties to further citizen interests

- 3.9 In the paper we discussed the required outcomes, desired outcomes, and specific duties that the Act asks of us. The interests of citizens are important throughout.

- 3.10 Of our required outcomes, all relate in some way to citizens. As the paper explains “there is a strong emphasis on securing the availability of a wide range of both electronic communications services, and TV and radio services. There is also a requirement to ensure a plurality of TV and radio providers, and a focus on maintaining broadcasting standards. Optimising the use of the spectrum involves thinking about how it can be used to meet the interests of citizens, as well as consumers.”
- 3.11 When considering the desired outcomes set out in the Act, the paper identifies two issues which are particularly relevant to citizens – promoting public service broadcasting, and our role in encouraging the availability and use of broadband internet access throughout the UK. The paper also recognises the broader citizen benefits that our role in promoting competition, investment and innovation can bring, alongside our role in preventing crime and disorder.
- 3.12 Identified in the paper are a number of specific duties that relate to citizens, namely the duty to promote media literacy, and the duty to ensure the local content and character of local sound broadcasting services. In addition to these, there are a number of specific provisions in the Act focused on inclusion. These seek to promote inclusion by, for example, encouraging the availability of easily usable apparatus.

### **Furthering citizen and consumer interests in practice**

- 3.13 As recognised above, and in the discussion paper, tensions can exist between the interest of citizens and consumers. This was also anticipated by the Act, which stipulates that when trade-offs need to be made then Ofcom must publish a statement setting out: the nature of the conflict, how it has been resolved, and the reasons why.
- 3.14 The paper also highlights that the Act grants us some discretion when our general duties conflict. Two examples of this conflict were given in the paper: our approach to public sector broadcasting, and our role in releasing the spectrum freed up by digital switchover.

## Section 4

# Summary of responses

- 4.1 The importance of citizen issues in the communications sector should clearly not be underestimated. In total we received 25 responses. Some respondents chose to address single or narrow issues, others offered a broader perspective.
- 4.2 When considering the total responses, a number of themes develop. Below, we address each theme in turn, summarising the relevant responses.

### Theme 1: the definition of 'citizen'

- 4.3 It was widely recognised by respondents that the word 'citizen' could be applied in many different ways. The Campaign for Press and Broadcasting Freedom succinctly captured the complexity and difficulties faced by the authors of the Act. They highlighted that legally in the UK we are subjects of the Monarch, rather than citizens of the State. Professor Sonia Livingstone built on this in her response to the paper by referring back to an argument that took place during the formation of the Act. It was argued that 'citizen' is a term that cannot be used in UK law as it refers only to immigration status; she dismisses this as "unnecessary semantic distraction".
- 4.4 Friends of the Lake District broadly agreed with the definition of 'citizen' that we discussed in the paper: citizen's interests relate to public interest, rather than the individual, economic interests of consumers. Dave Rushton added that the term 'citizen' has its own cultural and political meanings. Similarly, the British Humanist Association argued that citizens are members of a collectivity, with rights and responsibilities in society. This should be distinct from the interests of consumers – both individual consumers, and businesses.
- 4.5 **We recognise that there can be some confusion about the use of the term 'citizen'. Defining 'citizen' is an important exercise, as illustrated by the strength of feelings expressed by respondents. The interests, needs, and desires of 'citizens' can differ from other parts of society. We continue to consider these interests when pursuing our principal duties.**

### Theme 2: Ofcom's interpretation and application of 'citizen'

- 4.6 Some respondents considered that our interpretation of 'citizen' is too narrow. For instance, The Campaign for Press and Broadcasting Freedom states that we focus too heavily on access to services, and not sufficiently on the concepts and ownership of services. Similarly, citizen issues are not just those that effect vulnerable people, but the public as a whole. This theme was addressed by David Hall Systems Ltd which stated that Ofcom's definition is inappropriate, and that we should take greater account of emergency services, security and online government.
- 4.7 Some respondents considered that our interpretation is too broad. For example, the Voice of the Listener and Viewer, questions where the parameters lie - there is confusion whether non-citizens in community, such as children are included. They suggest that a working definition, found through engagement with political theory, should be a pre-requisite for policy making decisions.
- 4.8 Some respondents argued that we focus too much on consumers and competition-led citizen outcomes. In this regard the British Humanist Association considers Ofcom has regard "only for the interests of consumers and pretending that those of citizens were identical." The Campaign for Press and Broadcasting Freedom, and David Hickson agrees that we are too competition focused. The latter goes on to state that the ability to access services is a consumer issue, not citizen, and that consumer issues do not just effect individuals.

- 4.9 Conversely, BT agrees with our “subtle difference” differentiation between citizen and consumer interests. In a similar vein, D Mason agrees with our definition that all citizens are equal and have the same rights and responsibilities.
- 4.10 Both the Centre for Media Policy, Regulation and Ethics, and Professor Sonia Livingstone argue that Ofcom should engage more with user, citizen and civic society groups in order to improve its understanding of their concerns.
- 4.11 **The dual principal duty of Ofcom emphasises the importance citizen interests must be given when carrying out our activities. The overwhelming majority of Ofcom’s work has both citizen and consumer implications. Where appropriate we do seek to be explicit about what these interests are. In our forthcoming revision of the internal Ofcom guidelines on policy appraisal we will introduce a requirement to specifically state, where appropriate, the separate interests of citizens and consumers when making our policy decisions.**

### **Theme 3: the conflict between citizens and consumers**

- 4.12 When considering the conflict between citizens and consumers, respondents generally agreed that conflict can occur.
- 4.13 The Broadband Stakeholder Group attempted to define the conflict: tensions can be classified as shorter-term ‘consumer wants’ and the longer term broader social citizen interests. However, they go on to highlight the difficulty in identifying and demonstrating citizen interests, for example, they note how difficult it can be for citizens to make decisions involving the allocation of finite radio-spectrum when the services do not yet exist.
- 4.14 The Broadband Stakeholder Group also agree with the Act, i.e. that Ofcom must be explicit about the trade-offs necessary between citizen and consumer interests. The Ofcom Consumer Panel [now the Communications Consumer Panel] states that previous Ofcom projects have not always explicitly taken account of citizen issues.
- 4.15 The Communications Workers Union also acknowledges that conflicts can exist between citizens and consumers, and that difficult choices sometimes have to be made. When considering that consumers may face higher charges to meet citizen goals, they believe that in the long term the benefits to economic competitiveness as well as societal well-being will outweigh the initial costs.
- 4.16 The Voice of the Listener and Viewer argues that there is a conflict, and that Ofcom is misunderstanding it. Citizens and consumers are often intertwined and manifested through the same behaviour, but at a fundamental level, it is the status of ‘citizen’ which should have primacy.
- 4.17 One of the few dissenting voices was Salah Al-Chalabi, who insisted that there is no conflict between citizens and consumers. Instead, the conflict lies between the interests of suppliers and citizens/consumers.
- 4.18 Hutchison 3G UK Ltd state that Ofcom’s consumer policy is increasingly reactive, which is negatively affecting citizens. Specifically, they state that a “succession of consumer facing initiatives is diverting resource away from developing new and innovative services to the benefit of the citizen.”
- 4.19 **One recent example of the conflict between citizens and consumers can be seen in Ofcom’s work regarding the so-called ‘digital dividend’, brought about by the switchover between analogue and digital television. Consumer interests would be furthered by the rapid release of spectrum for the introduction of new technologies and services such as HDTV, yet citizen interests require that we ensure that the radio spectrum is used efficiently. Our approach to finding the right balance between the potentially conflicting interests has been to consult openly and widely with all stakeholders, setting out possible options and any evidence we have in support of**

**each of those options. On the basis of submissions received, we have sought to find the correct balance between the interests of citizens and those of consumers. Going forward, we will look to provide greater transparency on how potential conflicts between the interests of citizens and consumers are addressed in our appraisal of policy options.**

#### **Theme 4: positive citizen outcomes**

- 4.20 When considering positive citizen outcomes as a result of Ofcom activity, the respondents suggested many different initiatives.
- 4.21 The importance given to Public Sector Broadcasting, in particular the role played by the two Public Service Broadcasting Reviews, were mentioned as good examples by the Voice of the Viewer and Listener, the Centre for Media Policy, Regulation and Ethics and Professor Sonia Livingstone. The latter goes on to praise the role of Ofcom in raising the issue of a Universal Service Obligation for Broadband, the Digital Dividend Review, digital inclusion, community radio and media literacy.
- 4.22 The Communications Workers Union and Connect add to this list by offering their support to our work in protecting citizens from harmful and offensive content, scams and mis-selling.
- 4.23 The introduction of 03 number range was praised by David Hickson, but caveated by his concern that more must be done to support its use, particularly by publicly funded organisations.
- 4.24 BT said that in many cases the UK could be held up as a model within the EU. They agree with and continue to support the needs of different groups of citizens and consumers, including children, people with a disability and people living in rural and urban areas.
- 4.25 **Ofcom's coordinating role in support of the Government's proposal for a National Plan for Digital Participation is a good current example of our ability to bring together a range of stakeholders with the aim of ensuring that all citizens have the skills, motivation and confidence they need to benefit from the roll-out of new digital services.**

#### **Theme 5: negative citizen outcomes**

- 4.26 Three areas of Ofcom activity were highlighted by some respondents as having resulted in a negative outcome for citizens – spectrum auctions, local TV and Public Service Broadcasting. Other areas were also identified by individual respondents.
- 4.27 When considering the release of spectrum via auction, the Campaign for Press and Broadcasting Freedom, Media Trust, the British Humanist Association, Professor Sonia Livingstone, and the Voice of Viewer and Listener all expressed concern that citizen objectives could not fully be met by an auction process. Some of these respondents were concerned that spectrum is a public good, and should be explicitly used for services which serve citizen interests. Others were concerned that the case made by Ofcom on the merits of auctions may be flawed.
- 4.28 The Media Trust, Fife and Tayside Local TV Working Group and Dave Rushton all put forward the case for local TV as a positive for citizens. They argue in favour of allocating spectrum specifically for the use of local TV, to provide citizen benefits. Northern Vision also express support for local service public TV as a way of engaging individuals and groups in society.
- 4.29 Some respondents expressed concerns regarding the provision of Public Service Broadcasting. The Voice of the Viewer and Listener argued that television 'entertainment' is not considered as a citizen interest. Councillor Martin Alan Curry argued the case for making important TV content accessible to all, by expressing concern at the proposed removal of Sky

News from DTT as part of BSkyB's "Picnic" proposal, and at the lack of free to air sports programming.

- 4.30 When considering media literacy, Northern Visions believe that Ofcom's research should place greater emphasis on 'citizen' research. Building on this, the Communications Workers Union and Connect state their belief that Ofcom should focus on developing technical fluency of citizens; specifically, that the requirement in the broadcasting sector for employers to provide training should be extended to telecoms.
- 4.31 The issue of pricing transparency was considered by both David Hickson (who also makes a case for Ofcom being more pro-active with regard to 'silent calls') and 'Name Withheld 2'. Ofcom should do more to encourage price transparency, with 'Name Withheld 2' proposing that Ofcom investigate mobile companies charging consumers to call 0800 freephone numbers, and accusing some communications providers of ignoring General Condition 14.2 (the provision of pricing information when calling revenue sharing numbers).
- 4.32 In his response to the paper, Alan Gordon expressed concerns about Airwave (the telecoms network providing services for the emergency services). He argues that citizen interests have not been properly taken into account in considering the service's operation, as the mobile phones and repeaters used on Airwave's network cause harmful interference.
- 4.33 After stating its belief that the Universal Service Obligation for fixed line communications should be extended to other communications providers, BT go on to ask Ofcom to consider in greater detail the commercial implications of any decisions it makes.
- 4.34 **We recognise the depth of concern amongst those who responded on this aspect of Ofcom's work and agree that we need to more clearly identify the citizen issues which are relevant to our policy appraisal. To ensure a consistent approach, policy managers will be provided with a toolkit, requiring them to identify relevant citizen issues and explain how they have been taken into account in the policy appraisal process. Where the interests of citizens and consumers are in conflict, managers will be required to justify how they have sought to achieve a balance.**

## **Theme 6: future areas where citizens interests need to be considered**

- 4.35 Respondents proved keen to help Ofcom identify areas where citizen interests may need to be considered in the future. These suggestions have been passed onto the relevant parts of Ofcom. Some of the more interesting suggestions are listed below:
- set extra programming obligations on new/existing broadcasters;
  - reduce regulation to assist companies to provide positive citizen outcomes;
  - incentivise next generation access;
  - use the Consumer Interest Toolkit to more explicitly safeguard citizen interests;
  - consider the environmental impact of our policies, and the actions of our regulated companies;
  - establish effective competition in Mobile Termination Rates, Mobile Number Portability and access to liberalised spectrum;
  - broaden our scope to consider how citizens communicate with society through the media;
  - support local TV on DTT as well as online;
  - extend universal service obligations to other services;

- engage closer with civil society to consider citizen interests in collaboration;
- increase innovation by creating outcome-led policies, i.e. allowing industry flexibility, rather than stipulating methodology;
- consider in more detail the quality and content of broadcasting, and whether it is achieving citizen aims;
- report on the balance of decisions, split between those made for citizen interests and those made for consumer interests; and
- consider the “value for money” offered by all public sector broadcasters.

## Section 5

# Next steps

- 5.1 Under the 2003 Communications Act (the “Act”), it is stated “it shall be the principal duty of Ofcom, in carrying out their functions:
- c) to further the interests of citizens in relation to communications matters; and
  - d) to further the interests of consumers in relevant markets, where appropriate by promoting competition”
1. We are pleased that many of the suggestions received for actions by Ofcom to further the interests of citizens are either now being addressed or are being considered by the relevant Ofcom area. For instance, we worked closely with the Government’s Digital Britain initiative to explore issues relating to extending a universal service obligation to cover broadband internet, and to improve issues surrounding access and inclusion. We are continuing to work with government on these issues through the Digital Britain<sup>1</sup> process. Similarly, recent statements set out clearly Ofcom’s view on how best to provide an enabling regulatory framework for next generation access and we have seen the start of rollouts by Virgin and BT. Additionally, we aim to progress our proposals for improving mobile porting processes and consult on our final decision in 2010 and we are continuing our review of mobile termination rates
- 5.2 However, we agree with respondents that Ofcom’s decision-making processes should more explicitly account for how we differentiate between the interests of citizens and consumers, where they differ. Our original proposal was to incorporate, where appropriate, views expressed during the consultation within a forthcoming review of the toolkits used by Ofcom to support policy appraisal. This review will consider whether maintaining discrete toolkits which currently are used to aid managers in identifying issues including equality and consumer interests remains appropriate. We believe that it may be better to operate with a single comprehensive tool kit for policy managers, ensuring a consistent approach to a wide range of issues, including how we recognize and further the interests of citizens in the converged communications economy.

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<sup>1</sup> *Digital Britain. Final Report*, CM7650, The Stationary Office, June 2009.

## Annex 1

# List of respondents

A1.1 The following individuals and organisations responded to the 11 July 2008 discussion paper. PDF versions of each response is available on the Ofcom website at <http://www.ofcom.org.uk/consult/condocs/citizens/responses/>

- Al-Chalabi, S
- British Humanist Association
- Broadband Stakeholder Group
- BT
- Campaign for Press and Broadcasting Freedom
- Communications Workers Union and Connect
- Curry, Councillor M
- David Hall Systems Limited
- Fife and Tayside Local TV Working Group
- Friends of the Lake District
- Gordon, A
- Harvey, Professor S
- Hickson, D
- Hutchison 3G UK Ltd
- Livingstone, Professor S
- Mason, D
- Media Trust
- Name Withheld 1
- Name Withheld 2
- Northern Visions
- Communications Consumer Panel
- Rushton, D
- Sinha, J
- Tavener, P

- Voice of the Listener & Viewer