

Communications Consumer Panel and ACOD response to Ofcom's proposed Annual Plan, 2018/19

The Communications Consumer Panel, established by the Communications Act 2003, is a group of independent experts with direct sectoral experience. We ensure the citizen and consumer voice is represented in communications policy development.

The Panel's job is to ensure that the sector works for consumers, citizens and micro businesses - and in particular people who may be in a more vulnerable position in society. We carry out research, provide advice and encourage Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD (the Advisory Committee for Older and Disabled people) with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

We act as a "critical friend" to Ofcom, rather than a campaigning organisation. Our unique relationship with Ofcom, made possible by a Memorandum of Understanding, gives us early, confidential access to the regulator's thinking and means we can proactively influence decisions. By Ofcom sharing information and ideas in confidence with us from the very start of policy making, we can make early, robust, high quality interventions, ensuring that consumer and citizen interests are at the heart of Ofcom's thinking throughout. The level of trust we have fostered in the sector enables us to effectively influence communications providers and the regulator, and to hold Ofcom to account where appropriate.

The Panel encourages Ofcom, other policy makers and industry to look at issues through the eyes of people who use - or are excluded from using - communications services. As well as commissioning research, we work collaboratively with an extensive network of stakeholders in all nations, including those representing older and disabled consumers and micro businesses, and in other sectors, and give insight to businesses, regulators and Government, as highlighted in research by Citizens Advice on Tackling Consumer Vulnerability¹.

¹ <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/tackling-consumer-vulnerability/>



Response

We welcome the clear and concise nature of the draft Plan, and we are pleased to see that it is again set out in a way that makes it easier to assess how Ofcom intends to address the needs of consumers and citizens in the year ahead. We would prefer to see enhanced clarity in the explanations of the intended outcomes for consumers (including micro businesses) and citizens.

Since the publication of the draft Plan, a step change in the legal rights of communications consumers has been announced by the Government, giving further detail of the proposed broadband universal service obligation (USO) to be implemented by Ofcom. We welcome this recognition that decent broadband is now essential to the UK's consumers, citizens and micro businesses. As highlighted in the Annual Plan, 75% of consumers view the internet as important to them. With the interests of people living and working in rural areas in mind in particular, we will be keen to see prompt progress in implementation and a review process put in place, to ensure the promised 10Mbps download and 1Mbps upload speeds remain relevant.

We are keen to see further detail on the way Ofcom will support implementation and monitoring of Government's decisions on broadband universal service policy and are particularly interested in Ofcom's approach to promoting and protecting the interests of all consumers, including micro businesses, in the context of the USO.

In the past year, we have welcomed other developments which should bring about tangible improvements for consumers, such as: the Digital Economy Act 2017, which grants more powers to Ofcom to require the provision of more data from providers and in set formats; more powers for Ofcom in setting standards for access services provision across on-demand services; and imposing caps on mobile bills.

We also welcomed the review of Ofcom's rulebook, the General Conditions (GCs), which we believe will strengthen and clarify the rights of consumers once the published consumer protection policies are implemented. As we noted in our response to Ofcom's consultation on the GCs², the Panel engaged with the GC Review team at a number of points and we were glad to see our views reflected in the consultation document. We believe the revisions that will take effect from October 2018 will strengthen the consumer interest and avoid the risk of de-regulation undermining consumer protection. We are keen that Ofcom takes steps to ensure that the revisions are introduced smoothly; that they are not delayed; and that consumer information is timely, clear and accessible by all.

Priority work programme areas and ongoing work in 2018/19

The table of work programme areas for 2018/19 is clear and we consider that those areas cover the main issues affecting consumers in the communications sector. However, we would like to see some more detail in the outcomes for consumers of each of the listed projects.

The Plan is set out in a way that gives more focus to the specific work programme areas than to Ofcom's ongoing work (for example, the table at Annex 1 specifies milestones and

² <https://www.communicationsconsumerpanel.org.uk/downloads/ccp-acod-gcs-14-march-2017.pdf>

Project Directors accountable for each project). This focus is useful. However, in our view two vital areas are absent from Annex 1.

The first is nuisance calls, which could risk appearing less of a priority for Ofcom. We would encourage Ofcom to move nuisance calls into the work programme to highlight the emphasis that is actually being given to this issue. We recognise that it is an ongoing piece of work, requiring engagement with other parties (such as the Information Commissioner's Office (ICO) and Action Fraud) and that the volume of nuisance calls has declined in the past year. We applaud the work by Ofcom and industry on call blocking initiatives. We were also pleased that Ofcom agreed with our assertion that communications providers should be prevented from charging consumers to find out who is calling them. The update to the General Conditions, to be implemented in October 2018, mandates that caller line identification is provided at no additional cost, will allow consumers to make a free, informed choice whether to answer a call.

However, the impact of nuisance calls on vulnerable consumers, particularly landline-only customers, over 40% of whom are over 75 years old³, is still such that we believe that Ofcom's important work in this area should remain in high focus. According to the Ofcom-ICO Joint Action Plan (February 2018) an estimated 3.9 billion calls are received by UK landlines per year and 81% of Ofcom's nuisance call diary research participants had received some form of nuisance call, with home improvements and PPI being the most common call subjects in 2016 and 2017. We therefore believe that there is a strong case for including a reduction in nuisance calls as a strategic priority in section three of the Plan under the goal of protecting consumers from harm.

The second is complaints handling and customer service. Whilst we recognise that this is an ongoing work area, we are disappointed that it is not an area of specific focus within the work programme. We would like to see something reflecting the work required to a) hold CPs to account for improving their performance; b) improve the usefulness of the complaints data published by the Alternative Dispute Resolution (ADR) services; and c) improve awareness of, and speed of access to, ADR.

Promote competition and ensure that markets work effectively for consumers

Consumer engagement

Ofcom aims to help consumers, including micro businesses, engage with the communications market by identifying and addressing barriers to competition and exercising choice. The Panel welcomes this and believes it is vital that where consumers and micro businesses want to switch and to engage fully in the market, they are able to do so without undue complication or aggravation. We believe this ease of access to the market must include people with additional needs, such as those who need to use assistive technology and/or who are in rural areas, where it may be difficult to ensure competition on the same terms.

³ https://www.ofcom.org.uk/__data/assets/pdf_file/0015/107322/standalone-landline-statement.pdf

We urge Ofcom to include, the views of disabled people and people and businesses in harder to reach geographic areas when considering initiatives to improve competition and engagement.

Legal separation of Openreach

The Panel welcomes Ofcom's work to improve competition in telecoms, by actively monitoring and reporting on progress on the legal separation of Openreach from BT. The benefits for BT's competitors must be passed on to their customers and not unjustifiably enrich BT's rivals. Consumers in Northern Ireland - where Openreach does not exist - must not be missed out. It is vital that all consumer-representative bodies use their unique positions in the consumer landscape to best serve the needs of broadband consumers and potential broadband consumers.

We are concerned about the length of time it seems to be taking for consumers to enjoy the direct benefits flowing from the separation of Openreach.

Secure standards and improve quality

Broadband and mobile coverage and quality of service

Ofcom acknowledges in its proposed Annual Plan that there are times where competition alone will not serve consumers. While assisting those who would want to make the most of a competitive market we believe it is vital to recognise that, even in 2018, for some consumers adequate competition still does not exist. For instance, 60% of Scotland does *not* have access to all networks, to make a phone call⁴. Where the market fails to provide high quality outcomes for consumers and citizens, we agree that Ofcom must provide targeted interventions.

The broadband USO will help to ensure that the remaining estimated 1.1 million UK premises (4%) which cannot access decent broadband⁵ are up to speed by 2020. But 2020 is still two years away and in 2018/19 we would like to see Ofcom encourage CPs to improve coverage so that fewer households are dependent on the USO.

We continue to press Ofcom to think creatively about the allocation of spectrum - for example, incorporating a 'use it or lose it' clause, so that no provider has control over the airwaves without using them to improve consumers' and micro businesses' experiences.

We are committed to helping to improve broadband and mobile users' experiences and have consistently urged Ofcom and Government to improve quality and reliability, not just speed. A reliable service and excellent customer service are of great importance to consumers, not speed alone - Ofcom's 2017 research revealed that 46% of consumers, when asked why they would not be purchasing superfast broadband in the next 12 months, said that was because they did not see it as relevant to them⁶.

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/108843/summary-report-connected-nations-2017.pdf

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/108843/summary-report-connected-nations-2017.pdf

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0036/99792/Consumer-issues-survey-experience-of-nuisance-calls-March-2017.pdf



When it comes to broadband speeds, we believe there is a strong case for proportional billing to be implemented. In other words, where a broadband service consistently fails to deliver the promised speeds, the customer should pay proportionately less for that service. This seems to us to be a clear cut issue of fairness and communications providers (CPs) could do it now if they wished. We would like to see Ofcom consider how they can move the market in this direction, so that it better serves consumers.

Good quality mobile coverage would mean that all consumers would be able to use a mobile phone indoors, across the UK. We were pleased to see that Ofcom updated the threshold it used to measure signal strength to one that is more meaningful in relation to the way consumers use mobile phones⁷.

Broadcasting and on-demand programme services

While content and standards in broadcasting are outside of the remit of the Panel, in our ACOD capacity, we urge Ofcom to:

- encourage broadcasters to improve the portrayal and representation of older and disabled people on screen, by not just the BBC, but by other broadcasters and service providers, as part of its work to promote diversity and equality of opportunity in broadcasting. Ofcom's previous report showed that across UK broadcasters, only 3% of employees in the sector had informed their employer that they were disabled⁸;
- continue to push for higher standards in accessibility to make TV and on-demand services inclusive, such as improving the availability, awareness, use and quality of subtitles, audio description and signing - making use of new Code powers under the Digital Economy Act; and
- continue to drive up standards in the accessibility of Electronic Programme Guides (EPGs).

Our 2017 research '*Access to On-Demand Content: Time to catch-up*'⁹ highlighted audience members' experiences, including the inconsistency of availability of access services across broadcast and on-demand programme services and a feeling that providers did not view disabled people's needs as a priority. But without legislation in this area, Ofcom has been unable to enforce standards in on-demand programme services, unlike in the broadcasting sector.

We believe disabled people should have access to the same range of content as everyone else. We welcome the new powers introduced under the Digital Economy Act and look forward to contributing to the Code on Access Services, which will allow more people to enjoy the content that is available for all. We hope that the new Code will raise awareness of access services among audiences and raise the profile of access services for providers. We will work with Ofcom, Action on Hearing Loss, RNIB and other stakeholders

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/108843/summary-report-connected-nations-2017.pdf

⁸ https://www.ofcom.org.uk/_data/assets/pdf_file/0015/106350/diversity-report-uk-based.pdf

⁹ <https://www.communicationsconsumerpanel.org.uk/access-to-broadcast-and-on-demand-content-time-to-catch-up/access-to-broadcast-and-on-demand-content-time-to-catch-up>

to help achieve this. We have also recently welcome proposed improvements to Ofcom's EPG Code to make EPGs more accessible.

Protect consumers from harm

Vulnerability

The Panel is especially concerned about consumers in vulnerable circumstances whose interests may not always be taken account of by the industry - for example, people who have specific additional needs because they are unable to use mainstream services; land-line only consumers; certain postal services users; people who are not confident internet users; those on low incomes or in debt; people with Power of Attorney; and consumers, citizens and micro businesses in rural areas. Highlighting these interests is an important part of the Panel's role, as is working with CPs, Ofcom and other policy and industry stakeholders. We use research to inform our work, commissioning our own where necessary.

We therefore welcome Ofcom's continued focus on vulnerable consumers. In response to Ofcom's recent review of its General Conditions, the Panel supported the more holistic view of 'vulnerability' and Ofcom's proposal to require CPs to establish, publish and implement clear and effective processes and procedures in relation to consumers whose circumstances make them more vulnerable.

Ofcom also strengthened the requirement that CPs engage with the Panel and made it a requirement that CPs engage with the Panel in relation to their support of consumers in vulnerable circumstances. We welcomed this action in supporting consumers in vulnerable circumstances.

Issues of particular concern to the Panel in respect of vulnerable consumers in the communications industry include:

- ***Nuisance calls and texts***
As mentioned earlier, we believe nuisance calls remain a blight on all consumers who receive them; but they pose a higher threat to vulnerable consumers. The risk of harm is especially acute for those who are reliant on receiving calls to their landline, ranging from those who live alone, are house-bound and do not have access to the internet, to those running a micro business, who cannot afford to ignore a call but may end up paying to receive nuisance calls if they divert their line. With the deadline for PPI claims approaching in 2019, we believe there is a heightened risk of activity.
- ***Future of voice calls (migration from the public switched telephone network (PSTN) to voice-over internet protocol (VOIP))***
We are engaging closely with Ofcom to promote and protect the rights of people who are likely to be the most vulnerable at the point of switch-off. It is likely that this group will include voice-only consumers. Ofcom's standalone landline review revealed that there are approximately 1.5 million consumers that only use a landline and that

they are more likely to be older, disabled and on a lower income.¹⁰ We have raised concerns on behalf of this group of consumers, in regard to the installation of new equipment and the need to provide trustworthy support services. It is vital that intrusion is minimised and support and security measures are in place. We are pleased to note a specific project is in place in the Work plan, and we urge Ofcom to ensure that consumer impact, information and support are at the forefront of its thinking.

- ***Access services (subtitling, audio description and signing) on broadcast and on-demand content***

For reasons highlighted previously, the availability and quality of access services remain of high importance to the Panel. While disabled consumers are not necessarily vulnerable by default, they may be made vulnerable by a lack of equivalent services. We support Ofcom's aim to make communications work for everyone.

- ***Protection from scams, including cyber security***

We welcome Ofcom's commitment to network resilience in the Annual Plan. Our research 'Digital Footprints: A question of Trust' looked into the perceptions of consumers with high and low levels of digital confidence. It highlighted consumers' lack of trust in their mobile and broadband providers' care of their data, when compared to the likes of banks. We would like to see this improved and have encouraged CPs to offer a basic, but robust level of security protection for free and to take steps to help their customers protect their own data, so that consumers can feel confident online.

Protection from unfair practices and market failures for all consumers

All consumers and citizens, whether currently in a position deemed 'vulnerable' or not, deserve a fair deal. We see the following as key areas of importance for consumers and citizens in the year ahead and urge Ofcom to keep them high on the agenda:

- ***Unfair policies and practices***

We welcome Ofcom's enquiry into the cost of directory enquiries; we would like to see this extended to include access charges, to monitor any unintended unfair consequences of the UK Calling¹¹ initiative introduced in 2015 - fair and transparent pricing should apply across all tariffs and charges.

We also applaud Ofcom's investigation into unfair early termination charges (ETCs)¹², looking into the level of the charge and the transparency of the consumer contracts. We believe ETCs are particularly unfair in situations where consumers move house to an area where their provider does not provide a service. This is not the consumers' fault

¹⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0015/107322/standalone-landline-statement.pdf

¹¹ <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/uk-calling>

¹² https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01199

and they should not be penalised for moving house, nor should the provider be unjustifiably enriched through failing to provide a service for them. The detriment is compounded in circumstances where consumers have no choice in moving house, such as rental tenants.

- ***Customer service and complaints handling***

We have welcomed the introduction of automatic compensation; this is an important step in helping consumers to access redress without the hassle of going through a formal process. We hope to see the process implemented as soon as possible; we hope also to see the amounts of compensation offered reviewed on a regular basis by Ofcom to ensure that they are fair and meaningful to consumers.

However, some consumers will need to use providers' complaints processes and we continue to believe it is unfair for a consumer to have to wait eight weeks to be referred to an ADR scheme. We are not convinced that consumers as a whole are aware that they can ask for a deadlock letter - which leaves the balance of power with the CPs and leaves many complainants still suffering in silence, having perceived the process as too time-consuming, or giving up once they have started.

We welcome Ofcom's improvements in the transparency of complaints data, and its research.

Following on from our research and recommendations in 'Going Round in Circles' (2013)¹³ and 'Inclusive Communications: We're not all the Same!' (2015)¹⁴ the Panel has undertaken some new research to gain in-depth insights into the experiences of consumers who have recently been through telecommunications providers' complaints processes, including some who have given up and others who have persevered and taken their complaint through ADR. We hope to publish the results in early summer, 2018. We also hope the research will provide good practice examples of complaint-handling, which we can encourage providers to adopt, for the benefit of all consumers.

One of the most important factors in customer service and complaints handling is being able to get through to the right person or team easily. Ofcom's Comparing Service Quality report¹⁵ recently revealed that 59% of landline consumers found it easy to locate their provider's contact details and only 45% of landline consumers found it easy to get through to the right person on the phone. While 61% of landline customers said that the adviser they spoke to did what they said they would do, that leaves 39% with unfulfilled promises.

We find this completely unacceptable. Consumers must be able to trust their providers to get these basic elements of good service right and to a consistent high standard.

¹³ <https://www.communicationsconsumerpanel.org.uk/going-round-in-circles/going-round-in-circles>

¹⁴ <https://www.communicationsconsumerpanel.org.uk/research-and-reports/we-re-not-all-the-same-inclusive-communications>

¹⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0012/100605/comparing-service-quality-report.pdf



It is also vital that consumers are able to use methods of communication of their preference, so that they are not immediately put at a disadvantage. This includes the ability to use text and video relay services - and to know that they can be used. We would urge Ofcom to reinforce the requirement to promote widely services for disabled consumers (including Priority Fault Repair) to make it mandatory to promote them to all consumers. We will encourage CPs do so, so that all consumers, including friends and family, know that services are available. We would be very pleased if Ofcom would do likewise - perhaps by issuing guidance.

We recently welcomed the opportunity to feed into the design of Ofcom's next Comparing Service Quality report, to help make the information as meaningful, accessible and usable as possible.

Summary

- We welcome Ofcom's continued consumer focus, and its focus on vulnerable consumers/consumers who may find it more difficult to navigate the market;
- We would like to see stronger links articulated between activities and actual outcomes for consumers;
- We believe that nuisance calls deserve a higher priority on Ofcom's agenda than is implied in the Plan, reflecting the work that is taking place to tackle this issue, which remains of significant concern to many, including vulnerable consumers;
- We would like to see an item added to the work programme to show how Ofcom intends to encourage CPs to improve their customer service, complaints and access to ADR, holding them to account where necessary;
- Following the Government's announcement that there will be a legal USO on broadband provision we trust that actions will be added to the work programme, setting out Ofcom's work to ensure that the broadband USO serves the consumers it is targeted at.