

Minutes of the 81st meeting of the Advisory Committee for England held at Riverside House and via Teams on 6 October 2022

Present

Paula Carter	Chair
Aaqil Ahmed	Member
Emma Davison	Member
Matthew Littleford	Member (via Teams)
Alan Nunn	Member
Mark Smith	Member (via Teams) (minutes 1 - 6)

In attendance

Angela Dean	Ofcom Board Member for England
Emma McFadyen	Director, England
Monisha Shah	Ofcom Content Board (via Teams) (minutes 1 - 19)
Richard Spencer	Consumer Panel Member for England (via Teams) (minutes 1 - 14)
Amit Kamal	NextGenNEDs observer
David Edwards	Committee Secretary
Colleagues from DCMS (via Teams) (minutes 15 - 19)	
Other Ofcom colleagues	

Introduction
1. The Chair welcomed Members and attendees to the 81st meeting of the Committee.
Declaration of Members' Interests – Oral
2. No interests were declared by Members or attendees.
Minutes of the meeting held on 9 June 2022 and matters arising – Minutes 80(22).
3. The minutes of the meeting held on 9 June 2022 were APPROVED for signature by the Chair as an accurate record.
2G/3G Switch-off – ACE 15(22)
4. A Member had provided a background note summarising concerns that could arise from switch-off of both the 2G network (launched in the early 1990s for voice-only mobile services) and the 3G network (launched in 2003 as the first mobile data network), by 2033 at the latest. Members had an interest in the risks and impact on consumers, the vulnerable in particular, and on businesses that could arise from switch-off, including potential adverse consequences related to mobile roaming and to coverage.
5. 3G switch-off was expected to happen first and was led by the mobile network operators (MNOs). It was noted that Ofcom did not have direct regulatory powers in this space, that mobile licences were not technology specific and that the MNOs and the Government had agreed the timetable for switch-off. However, Ofcom was able to use its 'soft powers'. It was monitoring the process, engaging with MNOs and seeking to

ensure that switch-off would be as smooth as possible, with customers treated fairly and disruption minimised. Ofcom was also engaging with other stakeholders, including telecare providers, taking steps to raise awareness about the impact of switch-off and had published a consumer guide in August 2022.

6. Issues raised in discussion included benefit from trialling 3G switch-off in certain areas; some concerns about roaming SIMs; the limits of drive-by testing for coverage; and value in engagement with the GSMA¹. The Committee was reassured that MNOs were aware that there were concerns about switch-off, that they appeared to be willing to share good practice and that Ofcom intended to publish an expectations document aimed at MNOs (issues to include giving adequate notice to consumers and businesses, assessment of needs and provision of support to vulnerable customers and adhering to commitments to ensure close to equivalent coverage).

Ofcom Board update

7. Angela Dean reported on recent topics discussed by the Board (minutes and notes of Board meetings being available on the Ofcom website). It was noted that Will Harding had been appointed to the Ofcom Board.

8. Topics flagged included Ofcom's Three-Year Plan, published internally in September; the introduction of the new Career and Performance Management process for Ofcom colleagues; ongoing preparations to regulate online safety (OS); Ofcom's workplace strategy and proposals related to its offices in London, Edinburgh and Manchester; and the cost of living and its impact on consumers and the sectors regulated by Ofcom.

9. The Committee picked up on cost of living pressures and queried the low take-up of social tariffs in the telecoms sector, a Member suggesting that one reason could be a perception that these tariffs did not offer high speed data services. The extent to which such tariffs were promoted by communications providers (CPs) was raised and asking CPs how much they spent on promotion could be revealing. Other issues included take-up compared with how many consumers could benefit, desired outcomes and whether there should be a specific target. Angela Dean agreed to raise these issues with the Executive and feed back to the Committee, including a further query about the availability of data on national/ geographical splits of take-up for social tariffs. Another Committee talking point was Ofcom's 'connected working' policy and extent to which working had resumed at Ofcom's offices.

Consumer Panel update – ACE 16(22)

10. The Committee noted recent Consumer Panel activity and current priorities (minutes of Panel meetings being available on the Panel's website). The update focussed on issues including recent engagement with CISAS and Ombudsman services on the complaints landscape and support for consumers with additional support requirements; increased costs for CPs, with charges going up and cost of living pressures for consumers; and migration to VoIP.

¹ Global System for Mobile Communications Association

11. The Committee noted that there could be opportunities for Ofcom to work with other sectors, for example Ofwat had published a Cost of Living² report (in May 2022) that looked at consumers' experiences with household bills, particularly water bills, and views on value for money. The findings showed an increase in customers struggling to pay household bills.

12. Reference was made to essential services and it was noted that in case of debt there were certain circumstances when energy providers were not permitted to disconnect supply (water could not be cut-off for domestic households). There were issues about reliance on communications services, including emergency situations, with long running debates about essential services, and in this context the Chair queried whether CPs should be permitted to cut-off customers and a Member suggested that the universal service obligation in telecoms could be a base to build from.

Public Policy update – ACE 17(22)

13. Amongst other matters, Members noted recent Government changes including a new Prime Minister (Liz Truss assumed office on 6 September 2022) and a new Secretary of State (SoS) at DCMS (Michelle Donelan was appointed on 6 September 2022). The OS Bill was expected to go ahead but the business case for privatising Channel 4 was to be re-examined. It was further noted that the period of mourning following the death of Queen Elizabeth II and party conference season had impacted on engagement with the Government.

Content Board update

14. Monisha Shah reported on recent topics discussed by the Content Board (minutes of meetings being available on the Ofcom website). These had included a new format for meetings that would include a deep dive debate item as the main focus for discussion (at the September Content Board meeting the debate topic was Ofcom's approach to broadcast, video on demand and video-sharing platforms (VSP) complaints handling). The Committee noted recent sanctions decisions taken by Ofcom over the Summer period (Content Board members sat on standards statutory sanctions panels). Other recent matters discussed by the Content Board included Ofcom's BBC programme of work and annual Report on the BBC and the VSP regime (the Year 1 report to be published shortly and plans for Year 2).

15. The Committee discussed Ofcom's handling of content standards complaints, the expertise of Ofcom teams investigating instances of hate speech on minority community channels; the Broadcasting Code, levels of knowledge and the ability of small channels to comply with the Code; and provision of relevant training and guidance provided to licensees. The Committee agreed to return to these topics later in the meeting (as part of the Members' open session item).

DCMS and BBC mid-term review – ACE 18(22)

16. The Committee had submitted written views in response to the ongoing DCMS mid-term review of the governance and regulatory arrangements for the BBC. DCMS had

² <https://www.ofwat.gov.uk/wp-content/uploads/2022/05/Cost-of-living-report-Final.pdf>

a number of follow-up questions for the Committee. As a preliminary to discussion it was confirmed that views submitted, already and in the course of today's meeting, were the views of the Committee and not Ofcom.

17. The Committee was asked to elaborate further on its view that additional transparency requirements were required, in particular to provide more detail from the BBC to explain how investment decisions were made on a local and regional level. The Chair gave the example of BBC investment in a production in the Midlands expected to capture a particular audience. The BBC could provide evidence for the basis of its investment decision and should be able to say, based on that investment, what was the result it anticipated and then be required to report to Ofcom on the outcome, to allow the BBC to be held to account. There were related issues about representation and absence of diverse groups/ audiences on screen, *Peaky Blinders* made in Birmingham being given as an example. If the BBC was not delivering for certain minority audiences there had to be some justification and transparency in its decision making.

18. A Member suggested that a culture change was required at the BBC and that it should not be made to feel constantly under attack. It was stressed that regulation should be about supporting the BBC to fulfil its remit and meet its targets, as was the positive role of Audience Councils, established by the former BBC Trust to understand the needs, interests and concerns of audiences but now disbanded.

19. With respect to complaints and raising awareness about the BBC First process, the Committee made suggestions to flag the process, on the TV Licensing website and at the point of consumption, ie at the end of a BBC programme. There was a related issue about public perception that the BBC was 'marking its own homework' by handling its own complaints, whilst Ofcom dealt with complaints about other broadcasters, and whether BBC First should continue.

20. Attention turned to issues related to diversity. A Member argued that Ofcom should have an enhanced role to monitor diversity at the BBC, including meaningful sanctions. Referring again to the culture in the organisation, diversity needed to be improved from the top down, starting with the BBC Board and senior executives. In addition to the BBC, Ofcom would also need to meet its own diversity targets.

BBC Annual Report and Performance Report – ACE 19(22)

21. Ofcom would publish its fifth Annual Report and Performance Report on the BBC in November 2022. The Committee had an opportunity to comment on the Executive's early overview of its approach to this year's Annual Report, in light of Ofcom's June 2022 statement *How Ofcom regulates the BBC*, and on emerging themes and areas of focus.

22. A Member flagged to the Executive concerns expressed by faith groups, and in the wider context of the BBC's digital-first strategy, about more religious programming potentially moving online. There were audiences that relied on linear content and Ofcom, whilst allowing the BBC flexibility to enable it to better serve audiences, was clear that linear audiences must still benefit from content.

23. The Chair flagged the importance of the BBC's Public Purposes. These included Public Purpose 4 related to nations, regions, and diversity, with the BBC required to reflect, represent, and serve the diverse communities of all the UK's nations and regions, and to support the creative economy across the UK. The Chair commented that the

BBC's performance in delivering for audiences needed to be measured carefully against outcomes (echoing earlier discussion with colleagues from DCMS about the BBC's investment decisions).

Connected Nations – ACE 21(22)

24. The Committee had been provided with a summary of the key themes and measures that would be included in the Connected Nations 2022 England report, the seventh in an Ofcom series of retrospective and supply-side annual reports tracking England's communications infrastructure (fixed and mobile). As part of a suite of documents, the report was expected to be published in December. Meanwhile the Committee noted that an Autumn update would be published the following day, on 7 October.

25. Topics raised by the Committee included reporting on 3G switchoff and implications for mobile coverage (some locations currently having better 3G than 4G coverage) and take-up of newer faster broadband services, it being noted that customers did not always take the fastest speed available to them. The Chair queried Ofcom's role in promoting take-up and whether this could be left to the market. One issue could be confusion arising from the language or terminology used to describe faster broadband products.

SMEs experiences in the communications market – ACE 20(22)

26. Ofcom had commissioned quantitative research into the experience of SMEs in the communications market, a follow-up to research last undertaken in 2016. The research found communication services were critical to UK SMEs but there were signs of change in the use of communication services, such as a lesser importance placed on traditional fixed landline. The research also quantified the impact of the pandemic on hybrid working practices for small and medium SMEs. Overall, the research was positive in how the communications market was meeting the need of the majority of SMEs but it also identified SMES who were facing challenges.

27. Issues discussed by the Committee included SME reliance on communications services (83% had said that their businesses could not function without communications services) and their varied levels of resilience in response to service failures. Two factors were that many SMEs opted for service levels/support provided by residential contracts and that some were unaware of the availability of business contracts. Educating SMEs could be beneficial in addition to more thinking about compensation for loss of service, which could result in lost business. The Committee noted that overall 2022 findings were positive and could be used to inform Ofcom thinking in different areas of its work.

Ofcom Plan of Work 2023/24 – ACE 22(22)

28. The Plan of Work (PoW) set out Ofcom's work programme for the coming financial year. The current PoW, through its themes, set out goals and priorities for 2022/23, to help Ofcom work towards delivering those outcomes. The Executive was currently at the planning stage for the PoW 2023/24 and the Three-Year Plan, referred to earlier in the meeting, would help to shape this and four areas had been identified for particular focus over the next eighteen months: digital markets; digital resilience; converged consumers; and future TV distribution.

29. Ongoing issues for Ofcom’s agenda suggested by the Committee included migration to VoIP; 3G and 2G switch-off; fibre roll-out, including provision in rural areas; ensuring mobile coverage along transport networks; public and shared spectrum needs; fairness for consumers and businesses; resilience, eg in response to adverse weather and climate change; and economic and cost of living pressures, in the communications sector and for consumers and businesses. Ofcom would consult on the proposed PoW 2023/24 and planned to host related PoW stakeholder events in each of the Nations in January.

Members’ open session

30. This item focussed on topics raised earlier related to content standards investigations and the ability of small community channels to comply with the Broadcasting Code. Issues discussed included relevant training and guidance that may have been provided when a licence had been awarded when different people may have been running such services. A Member queried a ‘one size fits all’ approach and flagged the duration of some investigations, leaving a ‘sword of Damocles’ hanging over some community channels, and whether financial sanctions were proportionate. The Chair suggested that the Executive be invited to discuss these topics with the Committee at a future meeting.

Future agendas – ACE 23(22)

31. The next meeting would be the last for Emma Davison (based in the north-west of England) and the intention was to hold the meeting at Ofcom’s office in Manchester. To make the most of a visit to Manchester, the Chair proposed a longer meeting.

32. Emma had offered to help to ensure that the Committee was able to engage with local stakeholders and suggested, and the Committee agreed, a session with young people from a nearby FE college, to hear first-hand about their views and experiences of communications services. Channel 4 would also be invited to the meeting (an annual session with the Committee), online safety could feature on the agenda and a spectrum discussion based on topics previously suggested by Members.

33. The Executive was requested to work up the Manchester agenda in conjunction with the Chair and Emma Davison.

Information items

34. Broadcast, Postal and Telecoms data (England) – ACE 24(22): The paper was noted.

Any Other Business

35. Members noted reports in the media about consolidation in the telecoms sector [earlier in the week Vodafone and Three UK had confirmed they were in talks about a potential merger].

36. There was no other business.

Date of the Next Meeting

37. The next scheduled Committee meeting would be held on 1 December 2022.