

**OFCOM DISCUSSION DOCUMENT ON
STRATEGIC REVIEW OF DIGITAL COMMUNICATIONS
- SUBMISSION BY THE
CONSUMER FORUM FOR COMMUNICATIONS**

EXECUTIVE SUMMARY

This submission is made on behalf of the Consumer Forum for Communications (CFC). We have chosen to focus the submission on those parts of the discussion document that address consumer empowerment and consumer experience (Sections 12 &13) and those questions associated with these issues (Questions 17-21).

As regards **consumer empowerment**, we argue that digital communications is different from most other regulated sectors in that consumers need more sustained and more detailed engagement in order to obtain the best product or service at the best price and conditions. This is largely a result of the rapid technological change in the sector that is overwhelmingly to the benefit of consumers but makes their continual and informed engagement so much harder.

Therefore the CFC makes the following recommendations:

- Review of the profile of Ofcom as a provider of consumer information
- Examination of the case for an independent advisory body
- Review of the usage of price comparison websites
- Consideration of the role of consumer reviews
- Close monitoring of the new switching processes for voice and broadband
- Timely implementation of new switching processes for mobile and cable
- Study of the switching processes involved in more complex bundles
- Examination of the scope for Ofcom to make greater use of 'nudges'
- Study of the case for end of contract notifications
- Reconsideration of the resourcing of the Communications Consumer Panel with a view to strengthening it, especially as regards staffing
- Examination of the case for a consumer advocacy body outside the regulator with a dedicated focus on communications issues

As regards **consumer experience**, we highlight recent increases in line rental prices and sustained poor quality of service by many of the major providers of both fixed and mobile services. Customer satisfaction for communications services compares poorly with many other retail sectors.

Therefore the CFC makes the following recommendations:

- Adoption voluntarily by Ofcom of Part One of the Equalities Act 2010
- A greater willingness by Ofcom to use its 'soft power' by speaking out clearly on company performance
- Promotion of a consumer voice within companies to provide an independent challenge on quality of service
- Consideration of an effective model of penalties and rewards to promote quality of service by Openreach

INTRODUCTION

The Consumer Forum for Communications (CFC) is a grouping of some 70 organisations and individuals representing consumers and citizens with an interest in communications. The organisations include the Communications Consumer Panel, Citizens Advice, Which?, the National Consumer Federation, the Voice of the Listener and Viewer, and many disability organisations, while the individuals include academics and consultants with a particular interest in communications consumers.

The CFC is hosted by Ofcom but is independent of the regulator with an independent Chair.

On 12 March 2015, Ofcom announced that it was conducting a wide-ranging Strategic Review of Digital Communications (SRDC) and published the proposed terms of reference for this review.

On 11 May 2015, Ofcom held a general stakeholder forum on the review attended by a number of CFC members. Then, on 18 May 2015, Ofcom held a roundtable on the review specifically for representatives of consumers and SMEs and again a number of CFC members were involved. This initiative was very much welcomed by consumer groups. On 1 April 2015 and 14 June 2015, the CFC made initial submissions to the review addressing specifically the suggested terms of reference.

The CFC welcomes Ofcom's publication on 16 July 2015 of a discussion document on the SRDC and the opportunity to comment on it. However, for consumer organisations, engaging in this review is a challenge for two main reasons.

First, the discussion document is so comprehensive, covering so many complex issues. It is an excellent piece of work but it does run to 181 pages (the length of a book) and even the executive summary – which does not actually reference the 25 questions for discussion – is 18 pages long. The CFC appreciates that the scope of the review is wide and some of the issues are complicated, but believes that Ofcom could have thought about some shorter versions of the document targeted at specific audiences. In this regard, it would have been helpful if Ofcom had published a shorter and simpler consumer-focused guide to the review and convened discussions specifically aimed at consumer organisations.

Second, consumer organisations have generally suffered a reduction in resources over the last five years while at the same time faced growing pressures from their client groups, especially around immediate issues created or worsened by the economic recession. So consumer organisations want to engage with the review but have very limited resources to do so.

In all the circumstances, therefore, we have chosen to focus this submission on those parts of the discussion document which address consumer empowerment and consumer experience (Sections 12 & 13) and those questions associated with these issues (Questions 17-21). CFC member organisations and individuals have different interests and remits and therefore, while this submission represents a broad consensus of views following a process of consultation and discussion, it should not be inferred that all members necessarily subscribe to all points in the submission.

CONSUMER EMPOWERMENT

Ofcom's discussion document rightly identifies some of the problems that prevent consumers from engaging effectively with firms, such as limited or incomplete

information, behavioural factors, and coordination problems. Of course, these issues are present in most, if not all, markets and concern all regulators.

However, digital communications is different from most other regulated sectors in that consumers need more sustained and more detailed engagement in order to obtain the best product or service at the best price and conditions. This is largely a result of the rapid technological change in the sector that is overwhelmingly to the benefit of consumers but makes their continual and informed engagement so much harder.

In just a decade, we have moved from basic broadband to superfast broadband to ultrafast broadband and, within each technology, speeds have increased and coverage has been extended every few months. Over the same period, on mobile services we have moved from 2G to 3G to 4G and the service packages and mobile phones on offer, plus the coverage of networks, have changed monthly if not weekly. As far as television is concerned, the choice of terrestrial, satellite or cable is being further complicated by a whole variety of new 'over the top' services.

Looking at the sector as a whole, a further complication is bundling. While bundling can provide many benefits to consumers, such as greater convenience and reduced costs, there is the risk that bundling makes switching more difficult and less likely. Dual-play (voice and broadband) has been followed by triple play (addition of content) and now the offer of quad-play (addition of mobile). We have seen an increase in bundling over the last decade from 29% of customers to 63% [SRDC terms of reference, para.1.17] and a recent decline in switching with a reduction of a third in both fixed line and mobile from 2013 to 2014 [SRDC discussion document, para. 12.31]. It would appear that the fall in switching is a consequence of consumers' reluctance to switch when they have more services because of a greater perceived risk that the switching could be complicated or costly or go wrong. We would therefore be concerned that there is a risk of consumers becoming 'locked-in' to these bundles.

Meanwhile, for most consumers in the communications sector, access to and take-up of the most suitable technology and the best deal are not just matters of convenience but critical to how they engage with society, access information, use public services, purchase online, work from home, support their child's education, and maintain contact with distant and vulnerable relatives and friends.

Against this background, the CFC would recommend the following:

- **Review of the profile of Ofcom as a provider of consumer information –** Since its creation, Ofcom has changed fundamentally its willingness to provide consumer information and the range of information and guidance that it does provide. This is very much to be commended. According to the latest Annual Report, Ofcom received 2.3 million visits to the consumer and SME sections of its website, an increase of 29% on 2013/14. Ofcom's consumer guides published between April 2014 and March 2015 were viewed over 110,000 times. This is encouraging. But how many consumers know that this information and these guides are available from Ofcom? How many use Ofcom's information services and which ones do they find most useful? How can Ofcom make the availability of this information better known and the nature of it most receptive to consumer need? Ofcom could review the level of its involvement in price comparison. It maybe that price comparisons could be made more effective with a little more Ofcom intervention and we would commend the idea of using a number of consumer profiles instead of

individual usage. Each profile would correspond to a 'cluster' of usage patterns typical of a consumer group that could be described fairly simply, so people could quickly identify to which they were closest.

- **Examination of the case for an independent advisory body** – Ofcom, in partnership with providers and consumer organisations, should look seriously at the case for a 'one stop shop' for advice on communications products and services. This could be the single most useful initiative for consumers to emerge from the SRDC. It would be useful to look at the experience of NHS Direct/NHS Choices, Consumer Direct/Citizens Advice, Money Advice Service and Pension Wise. It should be recognised that, from a consumer point of view, such a 'one stop shop' for the communications sector would be expected to provide advice on the full range of connected devices and on issues of Internet content. The idea of an independent advisory body is floated in the SRDC discussion document but Ofcom appears to be thinking of it as essentially for SMEs. We would argue that such a body is needed for residential consumers too.
- **Review of the usage of price comparison websites** - It is disappointing that only around 8-15% of consumers say that they make use of such services in the communications sector compared to around 40% in the energy sector. It maybe that bigger savings are potentially available in energy but the number and complexity of options is greater in the communications sector. Ofcom should commission some qualitative research to learn why more communications consumers do not use comparison web sites with a view to encouraging greater use of such sites,
- **Consideration of the role of consumer reviews** – Consumers can empower each other by sharing their experience and views on different companies, services and products. Consumer reviews have played a powerful role in the travel sector through sites like Tripadvisor and we believe that consumer reviews can and should play a more influential role in the communications sector. Ofcom should examine the case for hosting such a service itself, in view of its acknowledged independence, or whether it could encourage another organisation to take on this role. The National Consumer Federation (NCF) has produced advice and guidance on standards for such consumer review schemes.
- **Close monitoring of the new switching processes for voice and broadband** – New Gaining Provider Led (GPL) processes have been introduced after many, many years of discussion and consultation and should make switching easier and more commonplace. The changes only came into operation in June 2015 but we need to know whether the new arrangements are working and whether they are having an impact on levels of switching, so early monitoring and reporting is necessary.
- **Timely implementation of new switching processes for mobile and cable** – The mandation of Gaining Provider Led (GPL) processes for voice and broadband took many years and the mandation of GPL processes for mobile and cable must be much quicker. We appreciate that a consultation on mobile switching is in progress but would want to see speedy progress. In the medium term, we would want to see a harmonisation of the switching process across the communications sector including other services such as fibre also moving to GPL, so as to reduce the confusion around switching

- **Study of the switching processes involved in more complex bundles** – Already 24% of households take a triple play package and it is assumed that recent consolidations are likely to lead to more quad-play offerings. Consumers need more help in assessing the value for money of their current bundle against competing offerings. Ofcom could review the level of its own involvement in such comparisons. Again it may be helpful to use a number of consumer profiles instead of individual usage. Then, if the consumer decides that a better bundle is on offer, we need to be sure that it is as easy to switch larger bundles as it is to switch individual service or dual-play bundles.
- **Examination of the scope for Ofcom to make greater use of ‘nudges’** – We are interested in the work of ‘nudge’ advocates such as Richard H Thaler & Cass R Sunstein and would encourage Ofcom to think about the scope and form of ‘nudges’ in the sector. But this can be a sensitive area and we would suggest discussion beforehand with the Communications Consumer Panel, the Consumer Forum for Communications and other consumer organisations.
- **Study of the case for end of contract notifications** – This could be the most effective ‘nudge’ of all. The optimum time to engage consumers is when their contract is about to expire or come up for renewal and such a requirement would incentivise providers to make a proactive improvement offer rather than a reactive retention offer.
- **Reconsideration of the resourcing of the Communications Consumer Panel with a view to strengthening it, especially as regards staffing** - Several years ago now, Ofcom decided to retain the Communications Consumer Panel (CCP) but to arrange cross membership with the Advisory Committee for Older & Disabled (ACOD) persons. At that time, the membership was reduced, the budget was cut back, and the staffing was curtailed. It is time for Ofcom as part of the SRDC to demonstrate its own commitment to consumer empowerment by better resourcing the Panel.
- **Examination of the case for a consumer advocacy body outside the regulator with a dedicated focus on communications issues** – The previous Chair of the CFC recently gave the keynote address at the National Conference of the Australian Communications Consumer Action Network (ACCAN). The operation of ACCAN is made possible by funding provided by the Government that is recovered from charges on telecommunications carriers. In the view of the CFC, UK communications consumers would benefit enormously from such a body being created in this country. Such a body might be funded by top-slicing of current Ofcom fees, a new supplementary fee on communications providers, hypothecation of Ofcom’s fines, or some combination of these funding mechanisms.

CONSUMER EXPERIENCE

The SDRC discussion document is right to have a chapter devoted to the quality of service and quality of experience. Communications is a very technical sector with a lot of specialist terms and regulatory jargon, but ultimately it is all about the service the customer receives and how the customer feels about that service.

The starting point is perhaps price. Ofcom itself acknowledges that, across the major landline providers, the basic fixed line rental fee has risen by an average of over 25%

in real terms since 2010 [“Communications Market Report 2015”, page 273] and average line rental and bundled call revenue per line increased by 27% between 2004-2014 [“Communications Market Report 2015”, page 275].

Recent months have seen a succession of price rises announced by all the major providers and Ofcom needs to ensure that its decision-making around the Strategic Review reflects what is happening in the market now. A “Guardian Money” investigation, published on 19 September 2015, claimed that British home telephone and broadband customers are paying between 25-30% more for their service than they did four years ago and as much as 50% more than standard prices in Europe. Loyal customers are being hardest hit.

Assessing overall quality is a tricky process because there are so many different measures one can use and so many different perspectives one can adopt. So, at one level, para. 13.13 can declare: *“We know from our research that general customer satisfaction with communications networks is high. 86% of broadband customers, and 91% of mobile customers, were ‘satisfied’ or ‘very satisfied’ with their service in 2015.”* But, even at this general level, are these levels of satisfaction – when around one in ten customers is not satisfied – acceptable to Ofcom and the industry?

Then, when we look beyond the general picture to more a more disaggregated view, we find all sorts of concerns.

Overall satisfaction with fixed broadband may be 86% in 2015 but it was 90% in 2010. Satisfaction with speed has fallen from 84% to 80% in the last year and the proportion who are ‘very satisfied’ with speed has fallen from 47% to 43%. [All figures from “Communications Market Report 2015”, page 317]

Overall satisfaction with mobile service may be 91% in 2015 but it was 95% in 2012. Satisfaction with accessing the network is lower at 86%, itself a reduction from 89% in 2012. [All figures from “Communications Market Report 2015”, page 320]

Ofcom’s discussion document draws attention to examples of poor customer service including inconsistent speeds, missed or postponed appointments, dropped mobile calls and failure to load web pages. Ofcom’s own research finds that a fifth of UK consumers experience blocked or dropped calls at least once a week.

As we pointed out in our earlier submissions on the SRDC terms of reference, it is vital to think of accessibility rather than simply access. We need to ensure that those with disabilities, whether blind or hard of sight, whether deaf or hard of hearing, whether of limited mobility, have equality of access to communications services so that all the other outcomes can be a reality for such consumers. Too often the consumer experience for those with various disabilities or disadvantage is much below the general level of consumer satisfaction levels and not captured by many surveys of quality.

More generally, surveys show that the quality of service received by the majority of communications customers falls short of the best in class. In the Which? October 2015 consumer satisfaction survey of broadband and fixed line providers, none of the big four providers (BT, TalkTalk, Sky, Virgin) comes in the top four which are respectively Zen Internet, John Lewis, Utility Warehouse and Plusnet. In the Which? May 2015 consumer satisfaction survey of mobile operators, none of the major networks (EE, O2, Vodafone, 3) comes top: both for contract and PAYG, Giffgaff and Tesco Mobile are rated best.

Twice each year, the Institute of Customer Service conducts sampling for its UK Customer Satisfaction Index (UKCSI). The latest data from July 2015 shows that customer satisfaction appears to have stabilised following two years of decline, but at 76.2 the UKCSI is still 2 points below its January 2013 highpoint.

The reports states: *"In a climate of rising customer expectations, especially around speed and convenience, organisations' ability to deal efficiently with problems and complaints is a key differentiator between high and low performance."* It points out that 13.2% of customers experienced a problem with an organisation in the past three months, rising to 22.2% in the telecommunications and media sector.

In the latest UKCSI report, the telecommunications and media sector comes second lowest of the 11 sectors surveyed. The latest score for the sector is 71.7 compared to 71.6 in January 2015 and 72.2 in July 2014. The report states: *"Of the lower scoring sectors, only telecommunications has suffered a fall in satisfaction, dropping 0.5 in the last year."* So a poor record becoming poorer.

Of course, in every market, providers on occasion fail their customers. Key issues then are whether the consumer knows what to do to obtain redress and how responsive the company is to consumer complaints. It is concerning that a company of the size and reputation of EE should until recently have had the most basic failings in its complaints handling system and Ofcom was right to fine EE £1 million for failing to comply with the regulator's rules on handling customer complaints. Too often when consumers complain to a communications company, they are made to feel at fault instead of the company, whereas consumers dealing with 'best in class' such as Amazon, John Lewis or Marks & Spencer's receive a very different experience.

There is a particular problem in the communications sector because of the central importance of Openreach in providing services that are not available from another supplier and the crucial importance of a consistently high quality of service. In stakeholder meetings at the beginning of the SRDC consultation process, Ofcom highlighted poor Openreach performance figures from the Fixed Access Market Review (FAMR) of 2014 but, as a consequence of the FAMR, Openreach is now subject to no less than 60 quality of services targets and is currently meeting all of them.

But here again we have the problem that, underneath general performance data, we have examples of really poor service. Para. 13.46 refers to "very long delays" suffered by some Openreach customers which is clearly unacceptable.

The quality of service challenge means that Ofcom, working with stakeholders, has to find a system of incentives – possibly including rewards/fines and praise/blame – which both drive up overall levels of performance and target occasions of particularly poor performance.

Against this background, the CFC would recommend the following:

- **Adoption voluntarily by Ofcom of Part One of the Equalities Act 2010** – So, *"when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage"*. At the moment, this part of the Act only applies to named public bodies but could and perhaps should apply to regulators and companies providing essential services.

- **A greater willingness by Ofcom to use its ‘soft power’ by speaking out clearly on company performance** – As a regulator, Ofcom is right to be evidence-based and measured in its pronouncements, but perhaps the time has come for Ofcom to be more direct in its assessment of what consumers are experiencing. In paras. 13.54 & 13.55 of the SDRC discussion document, reference is made to the range of information that it publishes but the data is presented ‘cold’ with minimal interpretation or comment. If Ofcom was to be more explicit on company performance it regards as creditable and company performance it regards as disappointing or unacceptable, such commentary would be likely to attract more media comment and indeed to be used by the companies themselves in their advertising and promotions.
- **Promotion of a consumer voice within companies to provide an independent challenge on quality of service** – During Ofwat’s Price Review 14 process, it mandated all water companies to establish Customer Challenge Groups (CCGs) to critique the company’s customer engagement programme and business plan for the following five years. Water companies found this process so useful that on their own account they are now creating successor arrangements to CCGs to monitor company performance against the measures agreed with the regulator as part of the Final Determinations. Could communications companies create an internal consumer voice which is able as a “critical friend” to assess and advise on the consumer experience including service levels and complaints? EE already has an External Advisory Board that includes service in its terms of reference.
- **Consideration of an effective model of penalties and rewards to promote quality of service by Openreach** – There is clearly a major debate around the SRDC about whether the structural separation of Openreach would be a proportionate and effective remedy for the quality of service issues experienced by customers of Openreach. It is welcome that recent Openreach QoS has improved and Ofcom will clearly wish to study carefully the scope for the proposed Openreach ‘Quality Charter’ to drive up quality even higher on a basis that is sustained. It would be helpful to see if a model could be developed of more severe penalties for sustained non-compliance with mandatory Q of S targets, possibly allied with the opportunity for Openreach to earn rewards (or off-sets against penalties) if it exceeded those targets sufficiently. This would suggest a graduated system of penalties so, the worse the failure, the higher the penalty, but on a geometric rather than an arithmetic calculation, plus the opportunity for rewards if targets were exceeded by a significant degree, as an incentive to achieve the highest levels of performance.

CONCLUSION

The Consumer Forum for Communications looks forward to working with Ofcom on the Strategic Review over the coming months, we are always ready to meet Ofcom colleagues and continue the discussion, and we hope to see publication of an ‘initial views’ document by the end of 2015.

Contact point:

ROGER DARLINGTON
Chair, Consumer Forum for Communications
E-mail: rogerdarlington@dsl.pipex.com

4 October 2015