

DCMS Communications Review – the Consumer Perspective

1. Introduction

This response focuses on consumer representation and advocacy in the communications sector, an area in which I have been continuously involved since 1989. For the past three years I have, at Ofcom's request, chaired the Consumer Forum for Communications (CFC), a grouping of third sector (consumer and public interest) representatives concerned with communications policy and regulation¹.

This is a personal response which draws on my long-standing experience in this area. It is not a CFC group response; however I have reason to believe that the views expressed in it are in line with views of CFC members who are ill-placed to make their own responses. It builds on a submission that I made last year to the BIS "consumer landscape" consultation². The Government response to that consultation published in April this year³ made no explicit reference to the communications sector or to the points made in that submission. The Consumer Perspective paper and seminar were also silent on these issues. The case made last year is even stronger now, and I therefore repeat it in the hope that this time it will at least be explicitly considered and feedback provided to CFC members.

2. Summary of key points

- Communications is a sector at least as deserving of expert independent consumer advocacy as energy, post and water. The BIS consultation recognised this, seeing telecoms as an essential service.
- In communications, the knowledge and expertise requirements are great, as the area is broad and constantly changing. Dedicated skilled staff are needed to do the job properly.
- However there are no signs of communications being included in the proposed Regulated Industries Unit (RIU) within the foreseeable future. Furthermore, the small core of relevant expertise at Consumer Focus is not expected to transfer to or be replicated at Citizens Advice, which has not traditionally specialised in this area.
- Rather, the resources available for communications consumer advocacy are continuing to dwindle:

¹ A list of members and notes of previous meetings are available at <http://www.ofcom.org.uk/about/organisations-we-work-with/consumer-forum-for-communications/>. CFC was set up in 1999 for mutual support in influencing the current Communications Act, and has continued to provide a forum for discussing relevant issues. It has around 40 organisational members, including all the major generalist consumer bodies and many smaller and specialist ones (several concerned with specific disabilities). All members take part in CFC on a voluntary basis and have very limited resources for consumer advocacy in communications.

² EMPOWERING AND PROTECTING CONSUMERS: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, BIS, June 2011.

³ EMPOWERING AND PROTECTING CONSUMERS: Government response to the consultation on institutional reform, BIS, April 2012.

- When the Communications Consumer Panel (CCP) was set up in 2003⁴, the major consumer organisations cut back their efforts in this area.
- Successive budget cuts have led to the CCP now having around a third of its original £1m budget and a single full-time member of staff. It is now expected to take on the responsibilities of Ofcom’s Advisory Committee for Older and Disabled People (ACOD) on top of its own remit, with a less than proportionate increase in resources.
- The intention of Parliament in including a Consumer Panel in the current Act is being subverted. When introducing the second reading of the Communications Bill to the Lords in March 2003, the then responsible Minister, Baroness Blackstone, said:

“The consumer panel will be the independent voice of consumers—close enough to influence but with the right degree of separation and independence to represent their interests and to carry out research.”⁵

The current reality is nowhere near this vision. The vision has been made unrealisable, not by any single active step, but rather in a changed environment and “death by a thousand cuts”.

- It cannot be healthy that a regulator, however well-meaning, should control nearly all the available resources for representing consumer interests in its areas of work.
- The Communications Review must restore adequate and assured funding for the important function of independent consumer advocacy in the sector.

3. The need for communications consumer advocacy

The communications sector now has an advocacy budget of around £300,000, coming almost solely from Ofcom. Table 1 on page 40 of the BIS consultation document showed that ten times that amount was available for postal services and approaching twenty times that amount for each of energy and water. Even given that the CCP does not handle consumer complaints or enquiries, this situation seems disproportionate. Compared with the energy sector, communications has more competition, but also far more complexity, and more scope for large detriments to a consumer.

More important than comparison with other sectors, however, is the need itself. With widespread take-up of broadband, and technological convergence, electronic communications is already a service which every household in the country relies on. The push for more and faster connectivity, and the move to e-government, mean its importance will grow further. There are many important policy and regulatory decisions to be made. Consumer representation and advocacy here will often provide valuable additional evidence for decision-making, and it may well also be needed to balance lobbying by an articulate and increasingly litigious industry.

⁴ Originally as the Ofcom Consumer Panel.

⁵ Hansard, HL Deb 25 March 2003 vol 646 c655.

4. Limitations of current arrangements

The CCP was founded at the same time as Ofcom, and after a slow start has done good work. It is a board of paid non-executives appointed on Nolan principles, supported by staff seconded from Ofcom. Although its early budget was three times the present one, it has always underlined its need to be selective in the issues it takes up, and has tended to focus on areas of long-term strategic importance. It has had a close and often non-transparent relationship with Ofcom, engaging with issues before they reach the public.

The CCP's strength as a close companion to Ofcom has to some extent been complemented by external consumer voices, notably from Consumer Focus, Citizens Advice and Which? – though these have devoted little effort to communications, in part because of the existence of the CCP. Many issues that have deserved attention from a consumer viewpoint have, however, received little or none. For example, industry self-regulatory initiatives have generally taken place without consumer input. Loss of experienced staff from the outside bodies (intensified during a long period of uncertainty about the future “consumer landscape”) means there is now even less expertise to draw on for such purposes.

Ofcom has also had five Advisory Committees of external members, again paid non-executive board style, which have met quarterly, four representing the four countries of the UK and one (ACOD) representing older and disabled consumers. These too have recently been trimmed to save Ofcom's budget.

Ofcom itself has a strong team devoted to consumer affairs and consumer policy, but this operates within an overall Ofcom framework which must balance consumer interests with competing stakeholder interests. The team has many useful achievements for consumers to its credit, but there is also a significant list of areas where industry interests appear to have been given too much weight, including:

- Apparent abandonment of attempts to make comparable quality of service measurements widely available.
- A long-standing preference for leaving provision of consumer price information to the market, which has led to full comparisons being next to impossible.
- A project on consumer switching which has been running for more than six years already and looks like taking several more to show any results.
- Only recently (after pressure from the CCP) has Ofcom agreed to identify the companies about which it receives complaints.
- Implementation in 2011 of the revised European Package in a way that allows providers to raise prices during contracts, relying on their own judgement that the resulting consumer detriment will not be material.

5. The BIS “consumer landscape” consultation

The BIS consultation document stated in paragraph 21:

“There can be a need for effective advocacy in all consumer facing markets. It is, however, particularly important in regulated sectors where choice may be more limited and the goods and services provided (energy, water, telecoms, transport) are essential to ensure quality of life and social inclusion, especially for the poorest and most vulnerable citizens.”

The BIS document suggested⁶ setting up a Regulated Industries Unit (RIU) whose coverage would include communications, water and public transport, subject in each case to the agreement of the relevant authorities. In relation to the CCP it said:

“Following recent changes, the Panel comprises six part-time members (including the Chair) and has a dedicated member of staff. Ofcom is in discussion with the Panel about its future role. BIS is exploring options for consumer representation in communications to be enhanced within the new consumer landscape model.”

Discussions about the RIU have progressed, and its design too is now the topic of further consultation⁷; on its coverage, this consultation document now says:

“The purpose of the RIU will be to represent consumers of markets subject to economic regulation. This would include from the outset the consumers of the energy and postal service markets in England, Wales and Scotland and consumers of water services in Scotland. The Government will consider further the benefits of the RIU covering water services in England, and other sectors.”

It appears that Ofcom (along with other “owners” of regulated industry consumer representation) has no incentive to change from the current arrangements; and no funding is proposed from any other source. **It is therefore urgent to pursue other “options for consumer representation in communications to be enhanced within the new consumer landscape model”.**

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⁶ In paragraphs 4.32-4.44.

⁷ Proposals for Design Principles for the Regulated Industries Unit, Consumer Focus, 18 June 2012.