Communications Consumer Panel

Communications Consumer Panel and ACOD's response to 'Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers' (Department for Business, Energy and Industrial Strategy, October 2021)

Background

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. We pay 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.

Strengthening the consumer voice in the telecommunications sector

In our response to BEIS' 'Modernising Consumer Markets' paper we proposed a new suite of initiatives to help strengthen the consumer voice in telecoms (click here to read the Panel's response to BEIS' consultation):

- increasing collaboration between UK consumer representatives;
- listening ever more closely to the needs of consumers and citizens in all Nations and Regions of the UK;
- working directly with communications providers to share best practice in supporting consumers – and particularly those with additional access and support requirements; and
- working more closely with Governments to ensure the consumer voice is reflected in policy development.

Our first report on the outcomes of these initiatives was shared with DCMS, BEIS and devolved departments and is published here: Strengthening the Consumer Voice in the telecoms sector. Our current Strategic Plan, published after consulting widely with consumer organisations, charities and other stakeholders, is published here: Strategic Plan 2021_22 - Communications Consumer Panel.

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Response

We welcome the opportunity to respond to this consultation and we agree that the UK needs "a tough and efficient competition enforcement regime to detect, investigate, penalise, and remedy breaches of competition law".

For the avoidance of doubt, where we mention 'consumers' in this response, we include micro-businesses (businesses with 10 or fewer employees) in this definition, as they face many of the same challenges as residential consumers, with the additional responsibility of running a business.

We are also acutely aware that there are circumstances where UK consumers are not (yet) able to benefit from a competitive market – because they may find that only one telecoms provider offers what they need, be that reliable coverage in a remote, rural area, an affordable tariff, or a set-up that meets additional access requirements that they may have.

We believe a two-strand approach is needed, to encourage competition and to protect consumers and citizens from market failures when they happen.

We believe the CMA should be acutely aware of the consumer experience in terms of the way competition works in practice – working with other regulators, as well as consumer bodies and charities to understand the needs of all consumers.

Consumer Law: Stronger Enforcement Powers for Enforcers

The Panel would welcome stronger enforcement powers for regulators in regard to the protection of consumers, citizens and micro businesses. Ofcom's investigation work requires a forensic, risk-based approach, which enables its decisions to stand up to public scrutiny. The Panel would like to be able to recommend stronger action where relevant and for Ofcom to be able to take it without the cost and delay of going to court. Therefore we strongly agree with government's proposal to empower the CMA to decide for itself when consumer law has been breached, mirroring its competition law enforcement and with the proposal to test the case for extending these powers and abilities to economic regulators. We would welcome the opportunity to comment further on this.

Consumer protection from unintended consequences – trials

We recognise trials as a positive tool for the CMA to use to test for unintended consequences for consumers. We believe that it would be ideal for all regulators to have trials in their regulatory toolkit – we responded to Ofcom's 2019 consultation to say the same (Consultation: Trialling consumer remedies - Ofcom) In that response we said we would support the introduction of a General Condition that requires communications providers (broadband, mobile, home phone and pay TV companies) to perform field trials, creating 'real-life scenarios' to test the impact of proposed changes and learn from the actual experience of a group of consumers before taking further action that may impact groups of consumers.

We understand that this approach has been successful in the energy sector, following the CMA's recommendation that Ofgem introduce the requirement to run consumer trials into energy providers' licence conditions.

We also appreciated Ofcom's assurance in the 2019 consultation document that: "The sample of participants used is typically representative of the group of customers the remedy is aimed at, so that the results can be used to infer how this group as a whole would behave." We urged that Ofcom automatically considers vulnerable consumers a group to include in any trial. We agreed that Ofcom should use its discretion when requiring a specific trial and should consult on it, but that it should have the power as an addition to its regulatory toolkit, to require any provider to take part, assuming the trial was viable according to a thorough assessment and taking into account responses to consultation on the trial.

We await the outcome of the Openreach trials of Migration from PSTN to VoIP/all-IP networks, and Ofcom's response, but we note that these trials are based on migrating consumers from particular geographical locations to the technology in question and therefore it is not possible to focus on testing the impact of migration on vulnerable consumers.

Improved access to – and use of - Alternative Dispute Resolution (ADR)

Raising awareness of the existence of the ADR Schemes and their purpose amongst telecoms consumers is a vital first step and we have regularly encouraged Ofcom to explore methods by which this can be further achieved.

We welcome BEIS' attention to providing access, clarity and consistency across regulated and unregulated markets in terms of ADR. Consistency and clarity regarding escalation of complaints are key to empowering consumers to access ADR. We also believe that providers should be required to provide consumers with an audit trail of their complaint, on a proactive basis. We understand that some communications providers already do this.

The consultation asks what more can be done to empower vulnerable consumers to use ADR. A recurring theme across our various independent research projects has been one of a lack of consumer confidence in raising a concern or challenging their provider. The language used in the communications sector, aligned with fast-pace changes in technology and complexity in contract and tariff options can make it difficult for consumers to feel they know all the facts.

Our 2018 research 'Still Going Round in Circles' (published here: Still Going round in Circles: Complaints handling in telecoms (2018)) revisited our earlier study on complaint-handling, and also looked at consumers' experiences of ADR referral. We found that – as the title suggests, when trying to access complaints processes and ADR, consumers were stuck in virtue-less loop, trying to report complaints and refer issues. Consistency, clarity and quality in complaints processes across providers are key in addressing this. Providers should not be allowed to make it difficult for consumers to obtain an apology, or redress. To help to address this, we have proposed that communications providers set out a customer charter which contains useful information to help consumers navigate the communications

market, starting with an understanding of what their provider can do to assist them, how they can switch or complain if they are not happy, and options to contact their provider.

We strongly supported Ofcom's introduction of automatic compensation in this sector, but it is also important that the consumer voice is heard by providers, so that the root cause of issues is known and future issues can be prevented.

Consumers can currently take their complaints to ADR eight weeks after they have complained, or sooner if their complaint reaches 'deadlock'. We believe that eight weeks is far too long and have strongly encouraged providers to reduce this timescale to four weeks. In short, if a consumer's complaint is not resolved or "deadlocked" we cannot see why that consumer should have to wait two months before the next step (that is, ADR) can be taken. Four weeks is ample time for providers to handle a complaint, unless there are very exceptional circumstances, which we would expect would be taken into account by the ADR case handler. We understand from providers that the majority of complaints take much less than eight weeks to resolve.

Our ongoing concerns about awareness and take-up of ADR in the communications sector are shared by other consumer groups. In our collective view, complaints and disputes are an opportunity to examine what is going wrong in the market – or with a particular provider – and to address it, whether collaboratively with the provider, or through enforcement. Awareness of ADR, accessibility of services, transparency of outcomes are all useful tools in increasing take-up generally, but in terms of vulnerable consumers, it is important to take into account why the individual is being considered as vulnerable – if it is because they are grieving for a loved one, then allowing them time to postpone taking their case to ADR to a time when they are feeling less vulnerable might be an appropriate and helpful approach. If a person who is ready to go to ADR is being considered 'vulnerable' by their provider and the ADR scheme, because they have additional access requirements around a physical impairment, then the provider and ADR scheme needs to listen and provide information in formats that the person is able to use to make their case.

We believe that transparency is paramount in empowering consumers. We have consistently argued that accurate complaints data from the ADR services is an important measure of service quality and should be published regularly in a form that is digestible and useful to consumers, so that consumers can be aware of the performance of their providers and engage more with the market. This is useful to consumers, whether they are able and willing to switch provider – or not. Consumers who are less able to benefit from competition, because they live in an area of poor coverage, or they have additional access needs, may still be able to switch tariff or receive a better service if they are empowered with clear information about processes and previous complaint outcomes.

We have replied to several Ofcom consultations on ADR and our responses can be found on our website under 'Our Publications', along with other consultation responses we refer to in this response. Our response to Ofcom's 2017 ADR review is published here: Response to Ofcom's 2017 ADR review (communicationsconsumerpanel.org.uk) While our responses relate specifically to the communications sector, consumers do not live in sectors and we believe that facilitating more awareness, access and use of ADR in one sector will by

consequence cause consumers to seek redress in other aspects of life where they have not received good service.

We welcome efforts by the two ADR schemes in the communications sector to promote ADR and the time taken to work with communications providers to address common themes of complaints. However, we also note that the only protection consumers would have if an ADR scheme behaved poorly would be for Ofcom's approval of the scheme to be withdrawn.

Protecting consumers through clear, accurate, honest information: subscriptions and fake reviews

Subscriptions

As referred to earlier in this response, the communications sector is fast-paced, with new products, apps and services launching every day and numerous ways to pay. Consumers cannot be expected to keep up with the various ways businesses selling these services market them or charge for them.

In terms of subscription products, we believe they are no different to any other form of contract or commitment between a business and its customer, so it is essential that consumers are given enough information to choose what they subscribe to and for how long – and that they can opt out as easily as they signed up.

In the same week as this consultation closes, Ofcom will be closing its call for inputs in the first step towards its review of debt and disconnection policies in the communications sector. We have raised with Ofcom the point that terms and conditions for communications services and products should be clear and accessible and we see no difference here. Consumers who are tied into subscriptions that they cannot afford - and may not have been aware they were signing up to, or would be charged for – will suffer consequential detriment elsewhere in their lives.

Participants in our 'Don't cut me off!' research had avoided paying for other essential services to protect themselves from the risk of their communications services being disconnected. Consumers may become financially vulnerable at any stage in life and we believe it is vital that consumers are not automatically subject to auto-renewals. As we have advised in our response to Ofcom, which we would be happy to share with BEIS, statistics show that consumers who become financially vulnerable may be too overwhelmed by the situation to take the right action to protect themselves.

Fake reviews

As elsewhere in this response, we believe that information provided by use for consumers in choosing what to buy and why, should be clear, fair and accessible – it should also be accurate and not misleading. Fake reviews constitute fraud, they are intended to mislead for the gain of one seller or the detriment of another. We believe that as with other types of fraud, this should be treated as criminal activity. We believe that Ofcom should be given the power to take enforcement action against wrong-doers in this regard.