

**Response to DCMS consultation -  
“Reforming Consumer Advocacy in Telecoms”**

The **fair telecoms campaign** is pleased to respond to the [Open Consultation on Reforming Consumer Advocacy in Telecoms](#).

We have previously published comments on this issue, which we would like to be considered alongside what follows, as they raise issues that are relevant and inform our direct responses:

- ft** [Fairness in the telecoms market - The “loyalty penalty” and “switching”](#)
- ft** [We welcome “A New Champion for Mobile and Broadband Customers”](#)
- ft** [Response to Consumer Green Paper consultation - consumer advocacy](#)

## Advocacy vs. other roles

An essential feature of the role of an “Independent Consumer Advocate” must be its ability to make its own determination of how to Advocate the Consumer Interest, independent of the views of that interest formed by others, e.g. Government, Ofcom and Citizens Advice (in its other work).

This determination must be formed by independent assessment of the general Consumer Interest, including the commissioning of opinion research and other evidence gathering activities. This should include consideration of opinions of the Consumer Interest formed by other bodies, as well as sources of evidence for those opinions, but in a critical manner, not with blind acceptance.

To provide a worthwhile addition to the roles performed by others, acting “in the Consumer Interest”, it is vital that this body is seen to be genuinely independent. If it is to be an Advocate, then it must be seen to be advocating action that is not already being taken and promoting views that are not already held.

The proposal extends the role of an Advocate of the Consumer Interest into many other, potentially conflicting, roles.

Direct support to individual customers, supporting providers by the development of best practice and other suggested functions not only cross-over with the functions of other bodies but also conflict with the need to represent only the general Consumer Interest.

If the function is to sit within Citizens Advice (a proposal we support) , there is also a danger of it being drawn into supporting policy positions and other activities of Citizens Advice and the work of its Bureaux. This would dangerously undermine the independent nature of this statutory body.

## Scope

Our proposal is that the scope of the body, in its Advocacy, should be aligned with that of the telecoms functions of Ofcom, as defined in the Communications Act, covering the whole of the UK. This would require recognition of the position of consumers in Scotland and Northern Ireland, despite the fact that Advocacy was also being performed there by other bodies.

There may be other functions attached to the body, which would apply only in respect of England and Wales, given that they were being performed by others in respect of Scotland and Northern Ireland. We do however see these as being secondary - if there are to be such functions.





## Work Plan

One essential requirement of the work plan is provision for a significant contingency. In particular, this is required in order to address activities undertaken by Ofcom during the period covered.

It is imperative that Advocacy on behalf of the Consumer Interest, as seen by the Advocate, may be delivered at critical points in the formation of Ofcom, and indeed Government, policy. Ofcom must have the right to act as and when it chooses; the Advocate cannot set Ofcom’s consumer agenda, but it must be able to respond to it when necessary.

There seems to be a problem with the “chicken and egg” syndrome. The Work Plan must be prepared in the context of a realistic budgetary expectation, so the budget cannot be set simply to meet the needs of the Work Plan. A statutory formulaic approach to defining a budget would probably be preferable to a silly bidding process between the Advocate and Ofcom. The latter would involve politics that should be resolved, at least in principle, through the terms of the charter of the body.

It must be fundamental to the work of the Advocate that it is able to advocate the Consumer Interest by making appropriate representations on issues that arise, or come to public attention.

Each period may be focussed on specific projects, perhaps of some scale, but the Consumer Interest for that period, and the need to engage in advocacy, cannot be predicted in advance.

These comments are not intended to deny the need for the planning of activities and resources. We do however see it as essential that the agenda for the Advocate is never closed.

## Expertise and resources

It is vital that the Advocate is seen to be directed by those with a true independence of view, not representing any particular interest group.

There are many particular Consumer Interests which have to be seen to be reflected in its work, notably those of groups with particular, unusual needs. It is however vital that it is the Consumer Interest in general that is being represented.

Whilst the needs of all consumers must be represented, channels must be made available to those who serve to advocate those which are particular. We see it as being part of the role of the Advocate to support and develop the expression of opinions on behalf of those with special needs.

For Citizens Advice to be competent to take on this role, we see it as essential that it is able to develop its competence, by engaging appropriate key personnel, probably ahead of the statutory granting of the Advocacy function.

As the need for additional public spending on Consumer Advocacy in the Telecoms field is already established, there is no good reason why this should be directed at Citizens Advice, once a decision has been made that this is most appropriate location for the hosting of the function.

There is a strong case to be made for direct transitional funding, which would be replaced by the permanent funding source once the necessary legislation had been passed and arrangements put in place. This would not only enable Citizens Advice to play an active role in the creation of the body, it would also enable it to “hit the ground running” once the correction of a policy error made in 2011 had been formally achieved.





## My personal position

As has been stated previously, some aspects of the work of an independent Advocate of the Consumer Interest in the telecoms sector is already being performed by the **fair telecoms campaign**. This work, by David Hickson even before the formal foundation of the **campaign** itself, has been seen to be very effective in advocating the interests of consumer, with many recognisable effects.

As the author of this response, I am happy to confirm an interest in transferring deployment of my skills, knowledge and efforts to the proposed new body. This statement is made to ensure the openness of approach which is seen in all of the work of the **fair telecoms campaign**.

For now it is the opinions of the **fair telecoms campaign** that I will continue to represent. It is my knowledge and skills that I am offering to transfer. It cannot be assumed that the opinions formed and the determinations made by the independent Consumer Advocate will necessarily align with those I hold at present.

## The issue of 'Choice' and switching

Perhaps the greatest concerns of the **fair telecoms campaign** in relation to the Consumer Interest is what we see as the effective abuse of the important principle of choice by the extensive promotion of "switching" as an effective way of securing the Consumer Interest.

The ability to exercise choice is undoubtedly in the Consumer Interest. It is however not in the Consumer Interest for a market to rely on the frequent, indeed perpetual, exercise of changing providers as the only means by which that interest can be protected.

Most telecoms services are provided on an on-going basis. In effect, a consumer is making a buying decision each day (or each hour) or every time they make a telephone call or access the internet. These decisions cannot generally reflect the exercise of choice, because use of telecoms services is generally under the terms of a contract, designed to be in operation for years.

'Switching' distorts the market. Every provider is tempted to focus its marketing efforts and pricing policies towards securing new customers from an incumbent competitor and offering discounted deals to those indicating a desire to switch. Other customers must suffer as a consequence, by making a proportionately greater contribution to the company's consumer revenue.

In addition to this "loyalty penalty", the overall costs incurred by consumers are heightened by vast expenditure on marketing and fees paid to "price comparison" operators.

The benefit to consumers of a competitive market only exists when delivered to ALL consumers. This is achieved by the actual threat of losing new business to competitors. In respect of existing customers (of all providers) the benefit of low prices and a high quality of service is only seen through competition, when **the threat** of customer switching prompts the necessary action.

The selective provision of discounts, for switchers, and those expressing an intention to leave, cannot be criticised in itself. That does however indicate detriment to the interests of consumers in general. Furthermore, it demonstrates that this general threat is not perceived and thereby not effective. This is market failure. We believe that this issue needs to be addressed, not made worse.





## Other consumer issues we see as being important

Points regarding the general operation of the market are made above. These are also covered in our briefing - [Fairness in the telecoms market - The "loyalty penalty" and "switching"](#).

The consultation document highlights some aspects of government policy, which it sees as being important to consumers - gigabit capable fixed broadband networks and 5G mobile technology.

High on the agenda of the **fair telecoms campaign** are the following consumer issues:

- ft** **The need to "un-bundle" repayment of the cost of a handset from charges for the on-going provision of telecoms services.** This does not preclude the discounting of either on the basis of commitment to the other, but tying the two together contractually should be eliminated.
- ft** **Clearer consumer recognition of the benefits of call inclusive plans and bundles.** The high 'penalty charge' incurred when calling ordinary numbers outside the terms of a plan or bundle is too often wrongly represented as being the 'standard' cost for a telephone call.
- ft** **The opportunity provided by departure from the European Union to adjust the regulatory balance in favour of consumers.** This will enable radical action to be taken to address situations where the effect of competition and excessively weak constraints on business fail to adequately address the interests of consumers.

The above issues are covered in our briefing - [Ofcom misses important points as it seeks to achieve "fairness for customers"](#).

- ft** **The need for Service Providers to be aware of the appalling consequence, for consumers, when 084 and 087 numbers are used other than for the provision of a genuine "Premium Rate Service".** In almost all cases, calls to these numbers actually generate more additional income to the phone companies than to the Service Provider. In many cases even the revenue to the Treasury in VAT is greater than that to the Service Provider. See - [Now is the time to stop using 084 and 087 telephone numbers](#).
- ft** **Both the potential and the foreseen impacts on consumers of the upcoming switch to IP as the basis for the landline telephone network.** These are covered by our consultation responses, [Ofcom consultation - Future of interconnection and call termination](#) and [Ofcom consultation - Promoting trust in telephone numbers](#).
- ft** **The longstanding need for meaningful and effective action to address the issue of "Nuisance Calls".** See [The Campaign to End Nuisance Calls - our three demands](#). Possible future actions under consideration indicate a continuing failure to properly address this issue. Past actions have been shown to be ineffective, despite being launched with extensive political hype.

Some of these points are covered in our briefing - [We welcome "A New Champion for Mobile and Broadband Customers"](#). This is not however a comprehensive list of all the current and upcoming issues of concern for the Consumer Interest of which we are aware.

We understand that other respondents are raising issues that they see as being important.

We see it as vital that a statutory Advocate of the Consumer Interest is aware of all important current and forthcoming issues and makes appropriate and proportionate responses to each, based on its own determination of the need for, and likely effectiveness of, intervention.





## Answers to Consultation Questions

### **Q1a - Do you agree with the proposed remit and activities of the new telecoms advocate, as described above?**

We believe (as stated above) that much of what is proposed extends too far beyond the role of Advocacy and could serve to distort, and potentially weaken, this important function.

Some of the additional activities are unquestionably worthwhile. If these are to be performed by the same body and covered by the same funding as the Advocacy function, they must be clearly identified as 'additional' in the terms of the formal remit.

### **Q1b - Are there any additional activities that should be included in its remit?**

Probably. We see it as important that determination of what additional activities are necessary in support of the Consumer Interest, as part of a statutory function with funding defined in statute, be made by the Advocate.

Only once the function is in place will it be possible to undertake the necessary research and give proper independent consideration to the issues, so as to make such a determination.

This comment does not preclude additional activities being covered by supplementary elements of the remit from the beginning. We nonetheless see it as imperative that the Advocate perform the function of Advocacy, in relation to services to support Consumers.

### **Q1c - What are your views on how the new advocacy body should interact with other organisations, including Ofcom and the CCP?**

The first point here is the essential requirement for independence.

Secondly, it is imperative that the remit recognises the duties in respect of the Consumer Interest held and being performed by all other bodies - Statutory, Charitable, Voluntary and Commercial. Ofcom will be seen as probably the primary target of the Advocacy.

It is therefore essential that the remit is clearly defined, so as to enable the development of strong positive and clear relationships with other organisations, of all types. This must ensure collective and collaborative action whilst avoiding "turf wars" and duplication.

In determining the Consumer Interest, it is vital the Advocate gives close attention to the views held by all parties and the evidence presented to support those views.

In addition to its own direct Advocacy we see an important role in the promotion of effective advocacy of the Consumer Interest by other bodies.

This is especially important in respect of those advancing particular Consumer Interests, given that the Advocate should only directly advocate the Consumer Interest in general.

### **Q2a - Do you agree that option 1 should be the preferred option and with our analysis of:**

- **Option 1 (Appointing Citizens Advice)?**
- **Option 2 (Expanding the CCP)?**
- **Option 3 (Creating a new ALB)?**

YES





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**Q2b - Do you have views on other options we should consider, including for the period before new legislation is introduced and the new advocate is fully established?**

As stated above (in [the final section on page 2](#)), once a decision has been made, we see it as important that steps be taken immediately to correct the shortfall in funding for the promotion of the Consumer Interest in Telecoms which has been clearly identified.

We strongly suggest the provision of funding to enable Citizens Advice (assuming acceptance of Option 1) to establish a team of key personnel focussed on the specific Advocacy function. This will not only start-up the necessary process, but will also enable assistance to be provided in the drafting of the legislation.

Adoption of the statutory role and the funding necessary for performance of additional functions will have to await legislation.

**Q3 - What are your views on the processes by which the funding of the enhanced consumer advocate would be raised and provided to the advocate on a year to year basis?**

The proposed funding model makes sense in relation to the proposed remit.

We are however anxious that there be some separation between the essential function of Advocacy and the additional activities proposed.

Given that the role of the Advocate must be seen to be separated from that of the target of its Advocacy, the notion of the Advocate having to bid to Ofcom (its primary target) for funding seems potentially problematic.

As the function is to be defined in Statute, funding for the central function of Advocacy (at least) must be assured.

This warrants careful consideration, however we would offer the thought that this should perhaps be defined in Statute, in suitable terms, albeit as a levy on Ofcom’s income.

An alternative, at least for the central function, could be for this to be provided from the Treasury, potentially subject to approval by parliament.

**Q4a - Do you agree with our analysis of the likely scale of funding for the new advocate?**

Broadly - Yes.

We do however, as stated above, look to draw a distinction between the central function of Advocacy and the additional functions referred to, e.g. “dedicated consumer support”.

**Q4b - Are you aware of any other reasons that would make telecoms advocacy more or less costly than in other sectors?**

We accept, in general terms, the principled argument that expenditure on Statutory Advocacy of the interests of Consumers should be proportionate to the value of consumer expenditure in the relevant market. This could provide a starting point.

Whether the proportion that is seen to exist for other markets is right would depend on a detailed assessment of the nature of the work undertaken by the equivalent Advocates and the effectiveness thereof, considering what functions other than Advocacy are performed.