

Response by the National Association of Deafened People (Registered Charity no 294922) to BEIS Green Paper “Modernising Consumer Markets”

1. The National Association of Deafened People (“NADP”) is a nationwide charity run by its members who are deafened. Our members have experienced hearing loss to varying degrees during their lifetimes. Some have had a hearing loss since birth or early childhood, others may have become deafened suddenly during adult hood. Many share a gradually deteriorating hearing loss with age. Our members have a wide ranging experience dealing with their hearing loss, many use hearing aids while others have been fitted with Cochlear Implants. Our membership includes people of working age and those who have experienced deafness during their working lifetime. In our responses to the questions raised we have attempted to incorporate the views and practical experiences of our members.
2. Communication is the obvious main barrier to a deafened person’s quality of life, education attainment, employment success and general well being. Deafened people are reliant on regulators to ensure their needs are anticipated and met, particularly with developments of technology, and that they are not left behind. This is why NADP is a strong advocate of Universal Design (also known as Design for All); ensuring that accessibility is factored in with the design of all technological developments. From our experience it would appear that the benefits of Universal Design are not fully appreciated and often seen as a barrier to competition rather than to aid it and ultimately provide a more level playing field. We would expect all regulators would share our view that accessibility is an essential ingredient to a successful market rather than an afterthought. Whilst our focus in this response is on Ofcom’s remit we hope that other regulators will identify areas within their own remit where similar experiences could apply and would welcome further discussion with them.
3. Whilst we acknowledge the term “vulnerable” to categorise deafened people only the minority would proactively recognise themselves as such. We therefore use the term “Persons with Disabilities” (PwD) in our response consistent with the United Nations categorisation as used in the UNCRPD.
4. We welcome the opportunity to respond to some of the questions raised by BEIS in its Green Paper IModernising Consumer Markets”.

Consultation Questions

- 1. In which regulated markets does consumer data portability have the most potential to improve consumer outcomes, and for what reasons?**
- 2. How can we ensure that the vulnerable and disengaged benefit from data portability?**
- 3. How can we ensure these new services develop in a way which encourages new entrants rather than advantaging incumbent suppliers?**

1. In 2013 the existing telephone or Text Relay Service (previously known as TypeTalk) was updated so that it could be used on the mobile phone network. It was renamed Next Generation Text Relay. BT remained the sole provider of this service. All Communication Providers ("CPs") were required to provide access to a NGTR. The General Conditions as determined under the Communications Act were rewritten to reflect this and the Universal Service Obligation on BT was dropped. Under the General Condition 15 all CPs are required to promote this service.
2. Given the wider range of ways that mobile phones allow deaf people to communicate it is understandable that deaf people would be attracted to mobile phone contracts yet rarely were they offered contracts that excluded voice calls. However, before 2013 they were unable to make voice calls on their mobile. Our research suggests that over 90% of the deaf population has a mobile phone compared to just over 70% with a landline (predominantly to access broadband).
3. We believe it would be relatively easy for all CPs to identify deaf customers since they are likely to make fewer, or , in some cases, any voice telephone calls, depending on the level of their deafness, than the general population. Furthermore, those making a call using NGTS would need to do so using a prefix, which is easily recognisable by all CPs.
4. We believe this data could be used by CPs to actively promote NGTS to these customers. They should also be able to automatically put these customers on better tariffs reflective of their voice call usage.
5. This information could then be shared with other regulated industries so that they are able to identify these vulnerable customers proactively rather than rely on individuals to notify them. In our opinion this latter approach advocated by Ofcom is flawed as it is obviously affected by the behavioural trait of Inertia. Deafened people take a significant amount of time to recognise, admit and comes to terms with their deafness and so whilst their behaviour may change (such as turning the volume up more or using the phone less) they are unlikely to want to admit it to others. Many do not see themselves as vulnerable, but may become vulnerable in certain situations due to their hearing loss.

6. We believe that the failure of Ofcom to enforce the requirements on CPs to proactively publicise NGTS as required under General Condition 15 has led to a lower take up of NGTS than expected. This smaller market has reduced any incentive for any competition to BT due to the high start up costs. Ofcom states that the amendments of the General Conditions were to encourage competition yet it has done little to compel CPs to generate this competition. We also understand that alternative Telephone Relay providers have been reluctant to enter the U.K. market because of the restrictions placed on them by Ofcom. We believe if CPs were required to promote NGTS to all their customers this would create more use of NGTS by deaf people, a more significant market and encourage a wider range of other Telephone Relay services as available in other western countries such as USA, Australia and New Zealand to better meet the varied needs of the deaf population.
7. Linked to this we are mindful of the needs of deaf people whose first language is British Sign Language. We understand that Ed Vaizey MP wrote to all of FTSE 100 companies whilst he was Minister to encourage them to provide a Video Relay Service to their customers so that they can communicate with their customers who used BSL. To date only 17 of these companies offer this service. We agree with other deaf charities which better represent this population that a Video Relay Service should be provided by all companies in the U.K. to meet their obligations under the Equality Act and better serve their vulnerable customers.

5. Is there a need to change the current consumer advocacy arrangements in the telecommunications sector? If so, what arrangements would be most effective in delivering consumer benefits, including for those who are most vulnerable?

1. We value the work of both the Consumer Panel and the Consumer Forum for Communication, however we understand that their resources have been reduced and ultimately their influence weakened over recent years. We have been particularly concerned about the absorption of the ACOD into the Consumer Panel which we feel has diluted the focus on persons with disabilities in favour of work that benefits consumers as a whole rather than focusing on the actual needs of persons with disabilities. Whilst both the Consumer Panel and the CFC remain supportive of the needs of deaf people we feel that more support could be provided earlier and with a more persuasive voice to Ofcom. For example NADP and other organisations had expressed concern over NGTS for a number of years in terms of the difficulty of setting up the app and the slow speed of conversation but we do not feel our arguments for the benefit of deaf consumers have been recognised. Instead the U.K. Council on Deafness have had to approach the APPG for Deafness to intervene and arrange a meeting with BT and Ofcom in the House of Commons to ensure these issues are addressed. We believe an effective advocacy arrangement should have alleviated the need for this approach.

2. We are mindful that despite the reduced resources of Consumer Panel, Ofcom has fined CPs and the proceeds have been redirected to HM Treasury. One such fine was the late delivery of NGTS by BT resulting in a fine of £800,000. As far as we are aware no additional funding has been provided to any of the deaf population who suffered from the late delivery of this service, and in many cases would have paid for voice calls on their mobile phone tariff despite not making voice calls. Should an advocate of persons with disabilities have raised this question to facilitate redirecting resources towards this group they represent?
3. We also believe that a productive advocate needs to be proactive rather than reactive. We recognise the support that the Consumer Panel has provided to the campaign to improve subtitling of Video on Demand. However, we are mindful that this issue was first raised by the Telecommunications Action Group, an umbrella organisation of deaf charities prior to the formation of ATVoD, who strongly objected to the use of “encourage” rather than “require” when referring to the provision of access. Had this objection been accepted it would have saved considerable resources.
4. Our more immediate concern is the lack of regulation of the quality of live subtitling which was discussed openly in a round table at Ofcom over 5 years ago. This included broadcasters, providers, deaf charities and consumers. All appeared in agreement of the issues raised. Ofcom carried out further research measuring the quality of live subtitles with the expectation that regulation would follow in 2015. Since then little has materialised whilst quality of live subtitles has deteriorated from the perspective of reports from our members. We believe an advocate’s role would be to ensure delivery of agreed improvements and to ensure regulation of live subtitles.
5. From our experience few employers proactively employ persons with disabilities and the recent publication by NHS England and DWP called What Works: Hearing Loss and Employment¹ suggested that deaf people are underemployed compared to the general population. This pattern appears evident in Ofcom too. When UKCoD questioned Ofcom in its consultation on the diversity programme 2018-2022² why it had not included metrics for persons with disabilities in the diversity program, the response was that it was not possible to measure the number of its employees with a hearing loss. This is despite Ofcom supporting employees through Access to Work which would mean an identifiable measure and its use generally with external market research companies which could carry out similar anonymous research on its own workforce. We would expect that a proactive advocate would raise these questions with Ofcom directly.

¹ <https://www.england.nhs.uk/publication/what-works-guides-action-plan-on-hearing-loss/>

² <https://www.ofcom.org.uk/consultations-and-statements/category-3/diversity-inclusion-programme-2018-2022?showall=1>

6. Whilst we recognise the extensive experience within the industry of the current Consumer Panel we feel that they have struggled to understand the concerns of the deaf population. It is not clear whether any of the existing Panel has a disability or more specifically for our consumer base, a hearing loss, which makes us question how they can understand the needs of the most common disability globally as recognised by the United Nations. We believe that an advocate body should consist of experienced and independent experts who ideally are themselves persons with disabilities.
7. We recognise that a relatively attractive proposal for improved advocacy would be to extend the remit of a consumer organisations. However, our concern is that their attention is focussed on mainstream and popular activities which appear more attractive to potential sponsors and ultimately a more efficient use of their resources, which has led to the needs of persons with disabilities falling down their priority list. We would therefore question their experience of dealing with the needs of vulnerable people in an advocacy role.
8. Technology by definition is future driven. No one knows what the future may bring but thought and conviction are needed to ensure that persons with disabilities are kept up to speed with technology developments. This means persons with disabilities must be involved in the regulation of future developments where they are in a unique position of recognising where potential regulation is required and how to encourage competition which accommodates the needs of persons with disabilities. This would allow foresight and ultimately in our view a lesser need for time and resource draining consultations. In our experience industry tends to welcome open discussion with persons with disabilities of how their potential services may impact and allow them to accommodate these discussions in the development. However this needs to be first hand through the practical experience of persons with disabilities rather than representatives who don't necessary live with a disability.
9. Ultimately we believe that a Disability Advisory Panel should be set up. This panel would have different representatives of Persons with Disabilities and would provide guidance and expert advice to the Consumer Panel. We believe it should be proactive rather than reactive, and apply reasoned arguments based on the experience of a particular disabled group to justify a particular line of action. It should have sufficient power to ensure that the regulator can be called to account for any potential failings which may be detrimental to persons with disabilities or hinder competition.

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