

*"Working for quality  
and diversity in  
British broadcasting"*

Founded by Jocelyn Hay in 1983

1208:08



PO Box 401, Gravesend, Kent DA12 9FY  
Telephone: 01474 352835 Fax: 01474 351112

E-mail: [info@vlv.org.uk](mailto:info@vlv.org.uk)  
Web: [www.vlv.org.uk](http://www.vlv.org.uk)

## **A Response from Voice of the Listener & Viewer To Ofcom's discussion document 'Citizen, Communications and Convergence'**

Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. VLV represents the interests of listeners and viewers as citizens and consumers across the full range of broadcasting issues. VLV is concerned with the structures, regulation, funding and institutions that underpin the British Broadcasting system.

### **1. Introduction**

1.1. Voice of the Listener and Viewer welcomes the opportunity to respond to Ofcom's discussion document 'Citizens, Communications and Convergence'

1.2. As an organisation, we have historically been critical of what we perceived to be Ofcom's lack of attention to the citizen interest. On this basis, we welcome both Ofcom's attempt in this document to begin to address this issue, and also the explication of Ofcom's previous engagement with issues pertaining to citizenship. This information makes a valuable contribution to debates on citizenship and communications, and we are hopeful that it is indicative of a serious and sustained engagement by Ofcom.

1.3. Turning to the content of this document, there is also much that VLV is inclined to welcome and support. For example, we are in agreement with Ofcom's assertion that the citizen and consumer interest not only differ, but can in fact come into direct conflict (4.4). We are encouraged by the references to deliberative research techniques as a means of illuminating the citizen interest (2.34). And, given the policy context within which this document has emerged, we welcome the specific link drawn in the conclusion between the needs of citizens and the maintenance of public service broadcasting (5.9).

1.4. However, our ultimate assessment is that this document does not go far enough either in defining the citizen interest, or in explaining how it is to find expression and support in Ofcom's activities. The remainder of our response will outline our reasons for this assessment, focussing on four areas of concern. These are, in no particular order:

- Defining the citizen interest
- The question of 'access' in Ofcom's view of citizenship
- The relationship between citizen and consumer interests
- Translating the citizen interest into practice

## 2. Defining the citizen interest

2.1. If Ofcom's renewed engagement with citizenship is to prove a success, it seems essential that it produces an effective working definition of the citizen interest in communications matters, and indeed of citizenship itself. This is a pre-requisite for effective policy-making; it defines the boundaries and goals against which Ofcom's interventions on behalf of citizens can be addressed.

2.2. However, an assessment of 'Citizens, Communications and Convergence' finds that such a definition is notable by its absence. Instead, what emerges is a vacillation between two equally unsatisfactory alternatives.

2.3. The first of these is the definition of the citizen interest in terms too broad to provide a basis for effective policy-making and regulation. For example, reference is made to a speech made by Ed Richards in 2004, defining citizenship in terms of 'broader civic values' (2.12). Later, the document speaks in terms of 'the broader public interest or citizen interest' (2.28). Such definitions seem to do little more than to beg a number of consequent questions: How is the public/citizen interest to be defined, and who is responsible for making decisions on its definition? Are the 'public' and 'citizen' interests equivalent? When Ofcom talks in terms of the 'citizen interest', does it seek to include immigrant communities and other non-citizens? Does it seek to include children, who do not have the same rights and responsibilities as adult citizens?

2.4. Whereas in this set of definitions the problem is one of a lack of specificity, the opposite is true elsewhere. When 'Citizens, Communications and Convergence' turns to practice, it is prone to repeat a mistake made in a number of recent policy interventions (made by a variety of actors including the BBC Trust): that of an overly narrow definition of the citizen interest.

2.5 The most notable example in this document occurs in Ofcom's discussion of public service broadcasting (3.6), in which the citizen interest is defined by a list of what might be considered 'worthy' programming goals: information, the arts and culture, encouraging awareness of diversity. What is most striking here is the absence of any reference to entertainment, a key element in the current outputs both of the BBC and of commercial PSB's.

2.6. There are a number of potential arguments against this assessment. For example, the lofty goals described by Ofcom might be achieved through entertainment formats. In addition, it could be argued that entertainment is a matter of individual value, and does not carry a broader citizen interest. VLV would be minded to accept the first of these arguments, and to reject the second; entertainment has citizen value both as a means to discrete educational or informative end, and in its own right as a means of connecting individuals to society via shared experience

2.7. What is crucial, however, is that Ofcom recognises the dangers inherent in a narrow definition of the citizen interest. Its definition in this example could easily be used to support restrictions on PSB providers, blocking the production of entertainment-led formats on the grounds that these were not in the defined 'citizen interest', and could be provided

by the market. Such an outcome would, we would argue, have a highly negative impact in terms of plurality and quality, resulting in a net loss of value from both the citizen and consumer perspectives.

2.8. Elsewhere, Ofcom repeatedly adopts similarly narrow visions of the citizen interest, to be realised via interventions in communications markets to assist vulnerable groups. While this is undoubtedly an important and laudable element of the regulator's role, the danger persists that the notion of citizen interest will be restricted to similar post-policy 'fixes' at the micro-level. VLV, in common with many other civil society groups, would instead argue for a broader, more positive definition of the citizen interest to be embedded throughout Ofcom's policy-making and practice. We will begin to sketch this model in the conclusion to our response.

### **3. The question of 'access' in Ofcom's view of citizenship**

3.1. A further, and particularly troubling example of Ofcom's lack of clarity regarding the citizen interest revolves around the question of access to communications services and skills. 'Citizens, Communications and Convergence' suggests that this issue is a central one for Ofcom- variants on the phrase 'access to the services, content and skills they need to participate in society' appear throughout the document (2.21, 2.27, 3.1, Fig. 4.1, 5.2).

3.2. At first glance, this is a phrase that many civil society groups would be happy to support; it emphasises the centrality of communications to our social and cultural lives. What is not clear, however, is precisely what Ofcom means by 'access'. On the one hand, it could be read as a relatively conservative statement of individual freedom- that, as citizens, we should not be impeded from participating in communications markets should we choose to do so. However, it could also be taken to suggest something more far-reaching, implying that a basic entitlement to communications services, content and skills should be considered to be part of our rights as citizens. As should be clear, these two formulations would have very different implications for future regulatory policy.

3.3. Given Ofcom's historical and structural tendencies towards 'light-touch', deregulatory solutions, the stronger formulation might be considered an unlikely interpretation. Yet there is support for this position within 'Citizens, Communications and Convergence'. Sections 1.7 and 3.14 both mention BT's existing obligation to provide fixed-line telephony- the former actually making explicit the suggestion that other services could, in the future, be subject to a universal service obligation. For our part, VLV would contend that citizens would benefit from such an obligation regarding the provision of high-quality public service content from a plurality of providers.

3.4. Regardless of Ofcom's current policy position, what this debate reveals is the necessity for clarity and precision in formulating the citizen interest. Although we recognise that this is likely to prove a difficult, context-driven task, we consider it vital if Ofcom is effectively to discharge its duties to citizens. The imprecision regarding 'access' demonstrates this point; it might have equally been achieved via a discussion of precisely what constitutes 'participation in society'.

#### 4. The relationship between citizen and consumer interests.

4.1. As the discussion document makes clear (1.5), Ofcom has faced consistent criticism over its relative treatment of consumer and citizen interests, best represented by the controversy over the 'citizen-consumer' formulation (2.11). Ofcom presents a vigorous defence of its position and behaviour in this document, and argues that it has always considered the interests of citizens to be on a par with those of consumers.

4.2. This response is welcome, and it is particularly illuminating to read Ofcom's self-assessment of its performance to date. As stated, we especially welcome the explicit recognition that citizens and consumer interests are not only distinct, but can often come into conflict (4.4).

4.3. Unfortunately, there remains a tendency for the citizen interest to be defined in relation to the consumer interest; this is a technique which, whether purposefully or otherwise, weakens the former. Thus in section 2.28, the citizen interest is defined in terms of market failure; a last resort in the event that markets cannot deliver desired outcomes. Similarly, section 2.4 lauds the role of the market in delivering choice to citizens, whilst avoiding any corresponding discussion about its impact on plurality or universal availability.

4.4. There is also, it must be said, evidence to suggest that this tendency remains a feature of Ofcom's decision-making in practice. For example, it will be difficult for many in civil society to accept Ofcom's assertion that its approach to Digital Dividend Review illustrates good practice in relation to the citizen interest (4.11). While Ofcom will undoubtedly defend such decisions, we hope that it will at least understand why they might lead many to believe that it retains a default position of support for de-regulation and market-led solutions, against which the citizen interest can struggle to be heard.

4.5. If it is indeed the case that Ofcom values citizen interests to the degree that it claims, then it is our contention that this requires a fundamental shift in its conceptualisation of policy decisions. In this new conceptualisation, the citizen interest would become the first 'port of call' for policy, and any shifts towards de-regulatory solutions would have to demonstrate that they would not cause unnecessary harm to citizens.

4.6. The reasoning behind this reimagination is two-fold, touching both on practice and theory:

i) In practice, it is easier to de-regulate than to regulate. New regulation and intervention is only achieved at substantial cost, whether measured in terms of time, money, or behavioural change. On this basis, it should be recognised that an act of de-regulation that removes protection for citizens carries an inherent risk; it will be difficult to reverse should circumstances require it. Current debates regarding ITV's public service provision make this point clearly- if its regional news capacity is diminished, the losses in terms of local expertise and production bases will be difficult to retrace.

ii) From a theoretical perspective, Ofcom's current policy-making strategy seems to misunderstand the relationship between citizen and consumer interests. It is correct to say that this is a complex dynamic; the two are often intertwined and manifested through the same behaviour (2.23). But at a fundamental level, it is the status of citizen which has primacy in this relationship. As Ofcom acknowledges, we act as citizens in a variety of ways which do not involve markets (2.20). Furthermore, when we act as

consumers, we do so only on the basis of rights and capacities which accrue to us as *citizens*: the use of a shared language, a national currency, statutory rights enshrined through democratic process. It is the citizen interest which ultimately guarantees all forms of behaviour in modern society, and this central status should be reflected in Ofcom's strategy.

## 5. Translating the citizen interest into practice.

5.1. A general theme of Ofcom's argument in this document is that the citizen interest is somehow less tangible than its consumer counterpart; there is for example talk of an absence of appropriate metaphors for citizen behaviour (2.31). This seems an overly pessimistic stance - however it draws attention to a crucial point. That is to say, for Ofcom to effectively serve the citizen interest, it must:

- a) have in place a clear methodology by which to ascertain the citizen interest
- b) have in place a policy-making framework which embeds the citizen interest into Ofcom's practice.

5.2. In terms of ascertaining the citizen interest, Ofcom seems ready to rely heavily on the benevolence and empathic skills of its own staff, responding perhaps to the lack of clear guidance on this issue from the 2003 Communications Act (4.7-4.9). While we accept that, in practice, Ofcom's own judgement will and should contribute to the decision-making process, we do not believe it gives adequate 'voice' to the citizen interest.

5.3. In seeking to plug this gap, Ofcom should in the first instance maintain and strengthen its links and dialogues with civil society groups, many of whom devote their time to representing citizens or specific groups of citizens. Such groups are a valuable resource, and attention should be paid to ways in which Ofcom could bring them into the policy-making process beyond the usual practice of consultation response.

5.4. However, even the best-intentioned civil society group remains an actor with its own specific perspectives and interests; we at VLV for example would not claim to perfectly or totally represent the views of citizens in broadcasting matters. Therefore, it is crucial that Ofcom looks to find ways to directly engage citizens in its work. While it already carries out a great deal of research into the views of audiences, our concern is that this work is perhaps better-suited to capturing consumer preferences, rather than the more nuanced positions that can characterise the citizen interest. In seeking to capture the latter by traditional research methods, Ofcom may risk 'flattening' the views of citizens into an aggregated series of preferences.

5.5. As an alternative, we would instead endorse a practice to which Ofcom makes reference in this document- that of deliberative and other more engaged forms of research and assessment. In asking citizens to make more sustained engagements with policy issues through deliberative forums and more public consultation, Ofcom might be able to develop a richer account of the citizen interest. Put simply, we learn what the citizen interest is by talking to people as citizens.

5.6. In seeking to engage citizens in these debates, it is essential that Ofcom is able to offer an assurance of 'follow-through'- namely, a clear account of how the citizen interest will inform its policy-making and practice (and by which Ofcom can consequently be assessed). An equivalent already exists in relation to the consumer interest, in the form of the Consumer Toolkit as developed by the Ofcom Consumer Panel. It is our assertion that, as a matter of priority, Ofcom should seek to develop and consult on a corresponding 'Citizen Toolkit', which clearly states the means by which the citizen interest is to be embedded into every aspect of Ofcom's practice.

## 6. Concluding remarks

6.1. It is our belief, and hope, that 'Citizens, Communications and Convergence' will mark the start of a sustained debate on the relationship between citizenship and communications policy. We welcome Ofcom's opening contribution to this debate, and trust that it will consider the responses it receives in the same open spirit.

6.2. Ultimately, the key question here is a fundamental one: on what principles, rights and responsibilities do we base our conceptualisation of citizenship? The answer to this, which may only be found through an engagement with political theory, will inevitably set the boundaries of more specific policy debates.

6.3. In the discussion document, Ofcom prevaricates on this issue. At times it appears ready to embrace a broad definition of citizenship, making positive claims to social and cultural rights. Yet simultaneously, it retains the tendency to retreat into a more limited, negative vision of the citizen interest, one reduced to the role of fixing the punctures in a market-dominated solution.

6.4. It is our contention, unsurprisingly, that it is the first of these which should form the basis for Ofcom's thinking. In a heavily mediated society, communications technologies and our capacity to utilise them are absolutely central to our ability to fully participate in life- be it in the social, cultural, political or economic spheres. Ofcom should, therefore, begin to think in terms of a fundamental set of 'communicative rights' as a starting point for the citizen interest. These might include, but not be limited to, the following:

- the right to basic standards of media literacy
- the right of communities, groups and individuals to fair and accurate representation by content producers
- the right of communities, groups and individuals to *participate* in the public sphere via access to communications technologies (this could include, for example, a universal service obligation for broadband)
- the right to receive high-quality public service content from a plurality of providers
- rights of protection against offensive or harmful material
- rights of protection against mis-selling, 'hidden charges' and other practices which hinder access to communication technologies
- the right to consultation on significant changes to communication laws

This list is not intended to be complete or final; it is rather illustrative of how we might formulate a policy paradigm that takes citizenship as its starting point, rather than an addendum.

Voice of the Listener and Viewer, October 2008.