

Consumer Focus Board

Paper 8.1

Title: Consumer Focus approach to the debate on regulation

Purpose: For discussion and decision

Date of meeting: 1 December 2009

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Attachments: Annex 1: Regulation in the post-bureaucratic age

1 Overview

- 1.1 The Board has previously remarked positively about our positioning in the evolving debate on regulation and has judged that we should do further work in this area, building on our report 'Rating Regulators', our sectoral expertise in energy and mail market regulation, and our thought leadership on better regulation.
- 1.2 This short paper is primarily intended to act as a prompt for a Board discussion on our future positioning in this area, particularly with regard to the Conservative Party strategy in 'regulation in the post bureaucratic age' and the Government's actions and proposals with regard to a number of sectors and the wider better regulation sphere.

2 Action for the Board

- 2.1 To discuss our positioning in the regulation debate and agree that we should engage with politicians of all parties.

3 The key issues

- 3.1 Consumer Focus has a well-established standing in on issues around regulation, building on the 'Rating Regulators' report published earlier this year, our sectoral expertise in energy and mail market regulation, and our thought leadership on better regulation.
- 3.2 We are regularly asked to speak at national and international conferences and summits about the consumer perspective on regulation; we are represented on the BIS ministerial challenge panel on regulation; Trisha McAuley and Sharon Darcy are members, in a personal capacity, of the Ofgem Consumer Challenge Group which is advising on the regulator's distribution price control review; we have been asked by Ofwat to join a panel advising on the future of water regulation; and Philip Cullum chairs the Food Standards Agency advisory committee on consumer engagement and is a member of the Risk and Regulation Advisory Council (now coming to the end of its life) and the Department of Transport's expert panel on airport regulation.

- 3.3 Much of the thrust of our generic work has been to make the case for why consumers should be at the heart of the regulatory reform agenda. We have sought to reposition the consumer policy agenda as being in favour of better regulation, knowing that it is consumers who pay the price of unnecessary regulation through increased prices, reduced competition or lower levels of innovation. We have argued that the focus should be on the quality, rather than the quantity, of regulation, and have noted that business complaints of too much red tape often do not stack up.
- 3.4 Areas of particular interest for us include:
- 3.4.1 The statutory objectives of sectoral regulators and the extent to which they clearly and unambiguously put the consumer interest first
 - 3.4.2 The operation of UK economic regulators in the development context
 - 3.4.3 The importance and effectiveness of regulators' consumer engagement
 - 3.4.4 The extent to which government prefers new regulation to the effective enforcement of existing rules, and the apparent reluctance of some regulators to use enforcement powers as strongly as they might
 - 3.4.5 The tendency of regulators to frame questions in the same way as the companies they are regulating, even if they then come up with different answers
 - 3.4.6 The need for regulators to share knowledge and experience of what works, and the extent to which much regulation is not informed by a knowledge base on consumer and business behaviour and the impact of different regulatory approaches on this behaviour
 - 3.4.7 The extent to which this lack of behavioural insight is mirrored in better regulation initiatives aimed at changing civil servants' actions, which tend to be heroic but not obviously founded in evidence, which may well be why most do not work
 - 3.4.8 The relative roles of regulators and government in deciding policy and the appropriate boundary between them
 - 3.4.9 The scope for regulators to innovate and engage consumer and consumer bodies in less heavy-handed means of regulation, for example 'reputation by regulation' facilitated through the release of regulatory data to inform public decision-making.
- 3.5 All of this means we are well-placed to contribute to the evolving debates about the future of regulation. The Conservative Party paper 'Regulation in the post-bureaucratic age' is proving particularly influential.
- 3.6 Some of the detailed prescriptions for change set out in the paper feel familiar, particularly around 'one in – one out' and also the nomination by business and the public of failing and burdensome regulations. It is not obvious that they would prove

any more effective than when the Labour Government sought to introduce them. And as with the Government, there is still a tendency to frame the issues in terms of business impact.

- 3.7 But other aspects of the paper's analysis, particularly around regulatory objectives, parliamentary accountability and sunset clauses, are much more creative and tie in well with our own emerging thinking. It is proposed that we engage with this set of proposals and seek to influence their development – it is likely that at least some will be adopted no matter which party is in power.
- 3.8 The issue raised by David Cameron on the proper boundary between government and regulators in terms of policy-making is also a matter of interest to us.
- 3.9 We are currently finalising a 'fresh thinking' paper on our approach here, drawing on discussions between Board members and senior staff, led by Roger Darlington. We aim circulate the draft to Board members for comment prior to the Board meeting, with a view to launching it before Christmas. This should be a good basis for engagement with politicians from all parties in the new year.

4 Proposal

- 4.1 The Board is asked to:
 - 4.1.1 Discuss our positioning in the regulation debate
 - 4.1.2 Agree that we should continue to be active in this area
 - 4.1.3 Agree that we should engage politicians of all parties in the need for a clear consumer perspective.

5 Resources

- 5.1 The departure of Steve Brooker has reduced our short-term capacity in this space, although as noted above Board members and senior staff remain active. The new Chief Executive will want to review the balance of resources to ensure that this important work can be carried forward in a sustainable way.

6 Next steps

- 6.1 If the Board agrees, we will develop and implement a plan for stakeholder engagement in this area, drawing on the Board's advice about positioning.