



**Consumer
Focus**
Campaigning for a fair deal

Annex: Consumer representation for the 21st century: a 'Regulated Industries Unit'

June 2011

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

Introduction

Our booklet *Regulated Industries and Consumers*¹ (March 2011) set out the enormous challenges for consumers arising from changes taking place in gas, electricity, water, post and communications, rail and airports. These vital services used to be run by state monopolies but have been privatised. All are subject to economic regulation because of the difficulties of achieving full and effective competition.

The current structure for promoting and representing consumer interests in these sectors is a patchwork, and different bodies with varying roles and responsibilities represent consumers in different regulated sectors (see Annex). Most of these arrangements date back to when the sector concerned was privatised, or in some cases even earlier. While they have served consumers well to date, the changing economic and policy environment presents new challenges and opportunities. The UK Government's review of the consumer landscape makes it timely to consider whether alternative arrangements would be more effective.

The UK Government's current parallel reviews of economic regulation including sector reviews, consumer empowerment, and competition and markets policy, also provide important context to any consumer representation arrangements review. This is of particular importance in view of the need for major infrastructure investment across the sectors concerned, and likely bill increases for consumers over the next decade.

This paper sets out further thinking by Consumer Focus on how a new Regulated Industries Unit (RIU) could best be designed and structured, and the benefits that would flow from such a Unit. Consumer Focus itself is planned for closure by April 2013 and we do not seek in any way to reverse that decision. However, UK Government has made it clear that it does not wish to see any diminution in the promotion of consumers' interests and wants to see most of our functions retained. With this in mind, we have put forward this analysis of what we believe would work best for consumers; at least cost to the public purse. It is based on over 35 years' experience of representing and promoting consumer interests across the economy and what is needed for influence to be effective. Economic regulation is a complex business and specific skills and expertise are needed on behalf of those whose voices need to be heard: consumers.

¹ <http://consumerfocus.org.uk/g/4ns>

Policy context

We have taken account of wider public policy developments over the last year, which are relevant to consumer representation in regulated industries. Listed below are the main areas where our proposals will help achieve key UK Government policy objectives:

Streamlining and clarifying the consumer landscape

Our proposals would enable a further streamlining of current consumer advocacy and representation bodies and result in fewer quangos. The proposed remit for a 'Regulated Industries Unit' would cover water and railways as well as gas and electricity markets, communications, postal services and airports.

Establishing a distinct and distinctive consumer advocacy body for sectors subject to economic regulation would give greater clarity to all stakeholders in terms of a single body, the RIU, being the 'go to' body for economic regulators, the Consumer and Markets Authority (CMA), government policy makers and regulated firms. The Citizens Advice service should become the 'go to' body for individual citizens and consumers.

More efficient and cost effective arrangements

We estimate that our proposals could save £5 million to £10 million compared to the current arrangements which cost over £20 million. The RIU would not need any tax payer funding; it should be funded exclusively from industry levies. Indirect savings for consumers could be expected to be significantly larger than this – for example Consumer Focus's recent work on over-payment by customers of Npower led to a negotiated £67 million of refunds to the customers affected.

Better co-ordination across sectors subject to economic regulation

Bringing together consumer representation across all regulated sectors would enable cross cutting generic issues (eg smart metering in energy and water, tariff structures /complexity; price review consumer input; universal service obligations; network modernisation cost allocation) to be efficiently addressed, and for best practice in one sector to be promoted more widely. This would achieve strong resonance with BIS's own statement, in its newly adopted 'Principles of Economic Regulation', that says:

'It is important that institutional arrangements recognise interdependencies between sectors and that the effectiveness of policies is not hindered by consideration of regulation in silos'.

Putting consumer interests at the heart of economic regulation

This is UK Government's stated policy; but without independent, well informed and properly resourced consumer input into complex regulatory policy and decision making, regulators will find this difficult to achieve in the face of vigorous and well resourced industry representations. The RIU would work on the basis of well researched evidence properly deployed rather than seeking out media headlines.

Greater regulatory stability, to encourage more economic and efficient investment

Over the next five years £200 billion needs to be invested in energy, water, rail, airport, post and communications. Over a somewhat longer term a similar figure needs to be invested in energy infrastructure to ensure security of supply and to deal with climate and technological changes. Most of this will be private investment; the greater the regulatory certainty, the lower the cost of capital.

Strong and effective consumer representation in regulatory processes in advance of decisions that affect consumers being taken will help deliver stability to the regulatory system and help ensure security of supply.

Ensuring small businesses get a fair deal

A dedicated RIU could represent the interests of small business users as well as retail (domestic) consumers; small businesses are a class of consumers whose voice needs to be heard if they are going to play a full part in economic recovery.

Promoting deregulatory and self regulatory solutions

An RIU would maintain strong relationships at senior level with regulated firms and promote the spread of good practice, voluntary initiatives and other developments to help reduce the need for formal regulatory interventions. It could use a range of behavioural tools to incentivise good practice.

Empowering consumers

We see an RIU fitting well alongside the Citizens Advice service in helping fulfil the UK Government's consumer empowerment agenda: the advice function would help empower individual citizens while an RIU would provide collective strategic empowerment in complex regulated markets.

Devolution

We are conscious of the need to take account of devolution when designing a Regulated Industries Unit and considering its functions.

For example, in UK wide regulated industries such as Energy and Post, it will be necessary to make appropriate arrangements to advocate on behalf of consumers in the devolved context. This is both to ensure that:

- the issues arising for consumers in the devolved nations are adequately heard and reflected in the development of UK wide policy
- early and appropriate influence is exerted over policy initiatives that are (in these areas) within the competence of the respective devolved governments. For example fuel poverty strategies, green energy or energy conservation initiatives, investment in new methods of generation

As an example, the regulated industry of water is within the competence of the Scottish Parliament, with a Scottish regulatory framework and its own consumer advocacy arrangements, and aspects of (public) transport policy, investment and consumer representation are equally within the remit of the Scottish Parliament. Similar issues apply in Wales.

Role, responsibilities and powers of an RIU

An RIU could take a number of forms – options are discussed later – but whatever the organisational design, it would have the following role and responsibilities:

- Promoting the interests of current and future consumers (retail/domestic consumers and small businesses) in gas and electricity, water, post and communications, and rail and air ports, plus potentially other sectors which may in future be subject to economic regulation
- Understanding and being required to have regard to the interests of all consumers including those with disabilities, older people and consumers living in remote rural areas
- Representing the interests of consumers to statutory regulators in the discharge of all regulatory functions that impact on consumers – including for example revisions to licences, price reviews, enforcement and codes of practice
- Representing the interests of consumers to regulated firms and encouraging voluntary market-based solutions as an alternative to regulation
- Promoting the interests of UK regulated industry consumers in Europe and influencing EU legislation
- Representing the issues and concerns of consumers in the devolved administrations in the development of UK wide policy, and representing the interest of consumers in ‘devolved’ regulated industries (eg water) appropriately and effectively in the devolved context

The statutory powers required for an RIU to operate effectively would be as follows:

- Information gathering powers, so the RIU could undertake independent reviews and analysis where needed, subject to safeguards to prevent disproportionate data requests to businesses and regulators
- Formal rights to be consulted by economic regulators on all matters which affect consumer interests
- Rights of appeal to the CMA and sectoral regulators against high impact regulatory decisions
- Powers to undertake independent research and investigations into matters affecting consumers in relevant markets
- Powers to make a super-complaint to an economic regulator, or to the CMA where cross cutting issues affecting more than one sector are identified

There would need to be clear accountability to Ministers and Parliament (equally in the devolved administrations as and where relevant), to a range of Government departments (BIS, DEFRA, DECC, DfT, DCMS) and, in a different way, to the industries funding the work.

Skills and resources of an RIU

Many of the skills required for consumer representation in regulated sectors are generic: the ability to engage with and influence complex regulatory processes; understanding the economics of regulated sectors; the ability to document and analyse how regulated markets work for consumers; a good understanding of behavioural economics and technological issues. Dedicated sector specific expertise would also be required. The scale of work required by a consumer body in regulation industries, even in terms of responding to formal consultations, is considerable.

For example in 2010 UK economic regulators issued 150 consultative documents. In addition government departments carried out 75 policy consultations in regulated sectors, and the European Commission issued 36 consultation documents in energy and communication sectors alone. Not all of these require consumer input, but even if 50 per cent did the amount of dedicated work required is considerable.

In order to avoid any loss of focus which might result from bringing sectoral functions together, an RIU should be structured with dedicated teams for each sector. It would also have specialist expertise in legal, economic and market research working across sectors to maximise synergies, promote cross sectoral learning and make the best use of resources.

As indicated earlier, in the main, these markets are UK-wide and it will be important to maintain the flexibility to work in partnership with relevant consumer bodies in Northern Ireland, Scotland and Wales in order to develop a co-ordinated UK wide view where appropriate and to reflect particular needs and conditions in the nations. We also note that the UK Government may consider differing arrangements for consumer representation across the UK and is awaiting the views of devolved governments. Whatever the differing arrangements may be, the dual requirement to adequately reflect the needs and conditions in the nations in the development of a UK wide view, and to reflect the structure of regulated industries and their regulation (where this is devolved) is critical.

The influence of EU legislation on consumer interests across regulated industries is significant and it is important that the voice of consumers is heard when policies are being formulated. The RIU would work closely with other European consumer organisations and directly with European institutions and regulatory bodies.

In terms of budget, the current patchwork of consumer representative bodies in the most relevant sectors (gas and electricity, water, post and communications, rail and air ports) costs more than £20 million a year, comprising £5 million costs to the public purse through general taxation and £15 million in levies on industry. Part of these funds are required for advice work, but around £7 million of industry money would be required on our estimates to fund the advocacy work of the RIU. This should still lead to a net saving of £5 million to £10 million.

It should be expected that the reflection of devolution in the structure of a Regulated Industries Unit would result in identifiable resources to work on (sector specific) issues as relevant in the devolved contexts and if necessary a physical presence in the nations.

Conclusion

We see major policy and efficiency benefits from the establishment of a dedicated unit to represent the strategic interests of consumers in regulated sectors. Such a unit would cost less than the current system and reduce the complexity of the consumer landscape. It would ensure that complex, cross cutting and fast moving issues that will cost consumers millions of pounds in higher future bills are influenced and determined in a way that really does put consumer interests at the heart of economic regulation.

Our rationale is set out in this paper and in our earlier pamphlet of March 2011. We hope this further contribution to thinking on these crucial issues helps deliver the best outcome for today's and tomorrows' energy, communications, transport and water consumers – and possibly in other sectors in years to come.

Annex

Publicly funded bodies representing consumers in industries subject to economic regulation

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland formed by the Consumers, Estate Agents and Redress (CEAR) Act 2007.

It has statutory duties in respect of energy and post but it operates across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do. Consumer Focus has the following powers to:

- investigate any complaint or matter which affects or may affect consumers generally or consumers of a particular description
- investigate complaints made on behalf of gas or electricity supply consumers and postal services consumers. If these designated consumers are 'vulnerable'
- give consumers advice and/or make representations on their behalf
- investigate the number and location of post offices
- request that any of the following parties provide information required for the purpose of exercising its functions: the OFT; a designated regulator (Ofgem, Postcomm or Ofwat); any person (to include partnerships, corporate bodies, public and private) supplying goods or services in the course of a business
- apply to the relevant regulator or to the Court for an order requiring parties to comply with a request for the provision of information
- make 'super-complaints' about markets that are failing consumers, as a result of our successful application under the Enterprise Act 2002

The CEAR devolves to Consumer Focus Wales, Consumer Focus Scotland and Consumer Focus (Post) Northern Ireland certain representation, information, and investigation functions.

Consumer Council for Water (CCW) represents water and sewerage consumers in England and Wales.

It seeks to ensure that the collective voice of water consumers is heard in national water debates, and that consumers remain at the heart of the operation of the water industry. CCW takes up complaints by consumers if they have tried and failed to resolve issues with their water companies. The Water Act 2003 gives CCW the following functions and duties to:

- have regard to the interests of consumers of water and sewerage services in England and Wales, including certain vulnerable customers and customers that are not able to switch suppliers under the Act's competition measures
- handle and investigate consumer complaints in respect of water and sewerage companies
- obtain and keep under review information about consumer matters and the views of consumers on such matters
- make proposals, provide advice and information and represent the views of consumers to public authorities, water and sewerage companies and others whose activities may affect the interests of consumers

- provide advice and information to consumers
- publish statistical information about complaints to and about water companies
- investigate any matters of interest to consumers that are not necessarily the subject of a complaint

Waterwatch Scotland performs similar activities to CCW but in a devolved environment. The Public Services Reform (Scotland) Act 2010 abolishes Waterwatch Scotland and transfers the functions to the Scottish Public Service Ombudsman and Consumer Focus.

Passenger Focus (rail services consumers in Great Britain and coach, bus and tram consumers in England and Wales) is a statutory consumer body, which aims to get the best deal for passengers in the rail, bus, coach and tram sectors.

The Communications Consumer Panel is the policy advisory body on UK consumer interests in telecommunications, broadcasting and spectrum markets (with the exception of content issues). The Panel provides advice to Ofcom, the Government, the EU and others on how to achieve a communications marketplace in which the communications interests of consumers and citizens are protected and promoted.

The Aviation Consumer Advocate Panel – The Civil Aviation Authority has proposed that this new independent body is set up to represent passengers' interests. This would replace the Air Transport Users' Council, which was abolished earlier this year. Complaints handling will be handled by the CAA's Regulatory Policy Group, to ensure that consideration of the issues that most impact on consumers is at the heart of the Group's regulatory work.



**Consumer
Focus**
Campaigning for a fair deal

Consumer representation for the 21st century

For more information contact Adam Scorer on 020 7799 7900 or adam.scorer@consumerfocus.org.uk

www.consumerfocus.org.uk
Copyright: Consumer Focus

Published: June 2011

If you require this publication in Braille, large print or on audio CD please contact us.

For the deaf, hard of hearing or speech impaired, contact Consumer Focus via Text Relay:

From a textphone, call 18001 020 7799 7900

From a telephone, call 18002 020 7799 7900

Consumer Focus

Fleetbank House
Salisbury Square
London EC4Y 8JX

t 020 7799 7900

f 020 7799 7901

e contact@consumerfocus.org.uk

Media Team: 020 7799 8004 / 8005 / 8006

For regular updates from Consumer Focus, sign up to our monthly e-newsletter by emailing enews@consumerfocus.org.uk