

**ESAN PAPER AND CONFERENCE REPORT:
How can the consumer voice be
better heard in the regulation of
essential services?**



ESAN

The Essential Services
Access Network

January 2017



This paper is an amalgamation of two pieces of work:

- A paper commissioned by ESAN from independent consumer consultant Zoe McLeod to support their event on 2 November 2016 on '*How the consumer voice can be better heard in the regulation of essential services?*' and
- A write-up of the discussions at the event by Karma Loveday, Editor of The Water Report.

Both pieces of work were written in consultation with ESAN Chair Roger Darlington. Thanks to all the organisations whose material has been consulted, to the speakers for their participation and input, and to Richard Chow for taking the photographs.

FOREWORD

The Essential Services Access Network (ESAN) brings together regulators and ombudsmen on the one hand and consumer and voluntary organisations on the other hand to promote the consumer interest in four regulated sectors: water, energy, communications and financial services. From time to time, we organise events to which we invite colleagues from other regulated sectors such as transport and legal services. We are particularly concerned with issues such as access, affordability and vulnerability. In every case, we want the consumer voice to be stronger and more influential.

On 2 November 2016, ESAN organised its largest and most ambitious event to date. The theme was: *“How can the consumer voice be better heard in the regulation of essential services?”* A total of 18 speakers and some 90 participants came together at the iconic BT Tower to discuss the different models for consumer representation in regulated sectors and the different methodologies for learning what consumers think and want.

This publication is a synthesis of a background paper prepared before the event by consultant Zoe McLeod and a report of the event itself prepared by journalist Karma Loveday. It is structured in such a way that you can read each section more or less independently if you are more interested in some topics than others.

ESAN is strongly in favour of wider knowledge sharing and experimental use of different consumer representation models and different consumer research methodologies. We are of the view that this would be good for consumers, regulators and companies. We hope that this publication will assist in promoting such information exchange and experimentation. We stand ready to work with all relevant stakeholders to advance this progressive agenda.

So, what do we want from you?

- We would like you to promote the availability of this report to colleagues in your organisation and to encourage them to discuss the issues that are raised.
- We would encourage you to access video recordings of the conference presentations which can be found on YouTube at: <http://www.esan.org.uk/esan-conference-videos/>
- If you think you would be eligible for ESAN membership or you would like to subscribe to the informative ESAN monthly newsletter, please contact our coordinator Rosalind Stevens at: admin@esan.org.uk
- If you would like to discuss any of the issues in this report or to work with ESAN on any part of our agenda, please contact me at: rogerdarlington@dsl.pipex.com

ROGER DARLINGTON
ESAN Chair

CONTENTS

	<u>Page</u>
• Introduction	5
<u>Part 1: MODELS</u>	
• The Consumer Landscape - Background (2000-2016)	7
• What are the strengths and weaknesses of the consumer voice within the regulator?	10
• What are the strengths and weaknesses of the consumer voice outside of the regulator?	15
• What are the strengths and weaknesses of the consumer voice within the regulated company?	20
<u>Part 2: METHODOLOGIES</u>	
• How can behavioural insights help us to understand what customers want?	27
• How can consumer and citizen groups be more involved in policy development by regulators?	33
• How can the public interest receive appropriate weighting in regulatory decision-making?	41
• What is the role of different research techniques in regulatory decision-making?	
○ Willingness to PAY (WTP)	46
○ Randomised Controlled Trials	49
• Conclusion	53

How can the consumer voice be better heard in regulation of essential services?

Introduction

The importance of putting consumers at the heart of decision-making for business and regulators is well recognised. An effective consumer voice ensures that products and services more efficiently meet the needs of end users. It can assist with early warning of problems and faster identification of promising approaches to pursue. At its best it can help develop solutions to complex and costly problems and inform the often sensitive but essential strategic decisions that need to be made - for example, where limited investment should be focussed, or the cost and benefit trade-offs between current and future generations or different customer groups.

In Ofwat's words 'customer engagement is essential to achieve the right outcomes at the right time and the right place'¹.

A collaborative consumer voice can build consumer trust in companies and markets, provide legitimacy for investment and associated price increases, and support higher levels of engagement. This in turn facilitates delivery of commercial and public interest goals such as sustainability, reliability of service, security, and lower costs for all.

In regulated sectors, the need for an effective consumer voice is especially important where choice may be non-existent or more limited, or the goods and services provided (energy, water, telecoms, transport) are essential to quality of life and social inclusion.

There is of course no average consumer. The 'consumer voice' must represent domestic and business customers with different characteristics and needs, and in different circumstances. This includes the political sensitivities of representing different regions within England and, as appropriate, the devolved nations. These interests are not always aligned.

For those in vulnerable situations, less able to represent themselves, or at greater risk of harm when things go wrong, it is especially important that there is a strong voice to represent them.

The context for this debate

At the time of writing, how we ensure the consumer voice can be better heard is a timely debate. Government has committed to a Better Markets Bill² and issued a call for evidence on the current advocacy landscape. This reflects concerns from some quarters that the existing arrangements do not protect consumers³.

Regulators' expectations are rising, with monopoly companies required to engage on an on-going basis with consumers more creatively and effectively, and reflect these discussions in their business planning.

¹ Ofwat's Principle 2 of engagement.

http://www.ofwat.gov.uk/wpcontent/uploads/2015/12/pap_pos20160525w2020cust.pdf p.9

² <https://www.gov.uk/government/news/better-markets-bill-to-arm-consumers-with-more-power-and-choice>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/527985/bis-16-259-helping-consumers-get-a-better-deal.pdf

In competitive markets, the de-regulation agenda is resulting in greater focus on outcomes based regulation. This in turn puts increased onus on companies to proactively listen to consumers, including their most vulnerable, to identify, understand, and respond to their different needs, rather than rely on prescriptive rules for guidance.

The Business, Innovation, and Skills (BEIS) Committee is also undertaking an inquiry into corporate governance, including representation⁴. This follows Prime Minister Theresa May's announcement of her intention to strengthen the consumer and worker voice on company boards⁵.

There are as well new challenges. Understanding and responding to customers' changing requirements over time is not an easy task, and is arguably becoming more difficult. Customer expectations and priorities are constantly evolving and diversifying as technology develops, new market models emerge, and choice in products and services increases. The context in which engagement takes place is also more uncertain with, for example, increasing pressure on resources, population growth, Brexit and climate change. Alongside this, some sectors remain plagued by persistently low levels of customer trust and confidence.

About this paper

It was against this backdrop that ESAN hosted an event on 2 November 2016 on 'How can the consumer voice be better heard in the regulation of essential services?'. The event included speakers from a wide variety of organisations who discussed three main models for consumer representation and a selection of different approaches being used to understand the consumer voice. This paper captures the discussions on the day and provides a high-level introduction to the approaches. It apologetically does not specifically cover the consumer voice arrangements in Scotland, Wales, Northern Ireland or Europe. Nor does it look at consumer advice, complaint handling and redress, or negotiated settlement. For the purpose of this paper the 'consumer voice' includes the diversity of consumer voices and the public interest.

For consideration

There are many questions to be answered:

- Which consumer interests do we need to hear and why?
- How do we best understand the diversity of consumer voices?
- What does an effective consumer voice really mean?
- How do we reflect, balance and evaluate the diversity of different views and reach those least likely to share their opinions and expertise?
- What or who is a legitimate consumer voice?
- How do we ensure representation is translated into action in a timely way?
- How can we define and understand the voice of future consumers or citizens?
- And, is the customer always right – or are there times when we should not automatically accept the voices we hear?

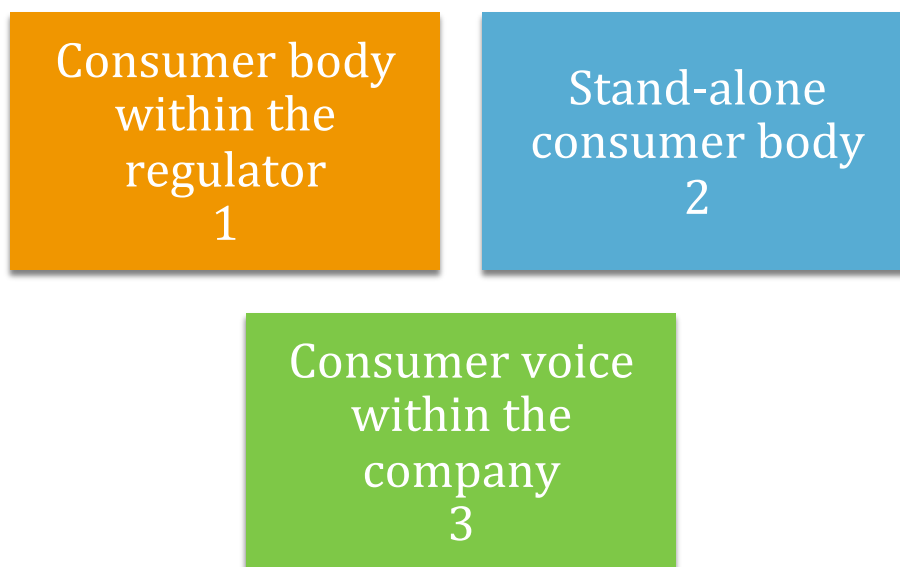
These are just some of the questions to consider.

⁴ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-innovation-and-skills/news-parliament-2015/corporate-governance-inquiry-launch-16-17/>

⁵ <http://www.brodies.com/blog/theresa-may-workers-boards-impact/>

Part 1: MODELS

At a high-level, in regulated industries, there are three main institutional approaches to consumer representation. These are:



The Consumer Landscape - Background (2000-2016)

Since 2000 there have been significant changes to the structure, number and types of organisations representing consumers and the public interest. Below is a basic overview of some of the main institutional developments. This is not intended to be any kind of evaluation of the impact of changes.

The rise of stand-alone consumer councils – post 2000

- Post privatisation of the utility sector the prevailing view in government was that stand-alone consumer councils, which were funded via company licence fees, were the best way to protect and promote consumers' interests. This led to: in 2000 Postwatch; and for gas and electricity consumers Energywatch; CCWater in 2003; and Passenger Focus for rail passengers in 2005. The aim was to create a strong independent consumer voice in each sector that could counter the industry lobby. These non-departmental public bodies (NDPBs) had a responsibility to advocate for all consumers, but especially certain vulnerable customer groups. They provided advice, investigated and handled complaints, conducted research and monitoring and had a policy role. Importantly, they had powers to request certain information from companies and regulators to inform their investigations. Under the Enterprise Act 2002, some were also given the right to fast-track consumer issues of concern to a higher body as part of the super-complaint process.



Statutory consumer panels – lighter touch regulation

- Alongside these new consumer councils, in some sectors, an alternative consumer voice model was employed. Instead of a freestanding consumer body, a number of regulators were required to establish and maintain consumer panels within their organisations to represent consumers. These regulators had legal and administrative duties to consider these groups' representations, fund their work, and usually give access to information they needed to do their work. The Financial Services Consumer Panel was established in 2000, followed by the then Ofcom Consumer Panel (now the Communications Consumer Panel) in 2003, and the Legal Services Consumer Panel in 2007. Advocates of this model argued it was lighter touch regulation, which was more flexible and better suited to faster moving and diverse sectors.



The creation of Consumer Focus 2007/8

- Under the Consumers Estate Agents and Redress (CEAR) Act 2007, the National Consumer Council, Postwatch and Energywatch were merged into a new consumer advocacy body called 'The (new) National Consumer Council'. This was subsequently branded as 'Consumer Focus' (CF) and retained broadly the same role as its predecessor bodies, with the important exception of complaints and direct advice provision. CF did not provide advice to individual consumers or investigate and handle individual complaints unless they were vulnerable energy or post consumers. CF's information gathering powers were extended to all sectors, not just energy and post. The government's stated intention was to strengthen and streamline the consumer voice and to create a more powerful body with critical mass to engage with government, businesses and regulators. In practice, financial pressures on government also played a role along with what was felt by some as a confrontational and uncomfortable relationship between these now powerful consumer councils and government.



Reforming the consumer landscape - 'the bonfire of the quangos'

- Between 2011-14 the new government introduced further institutional reforms to the consumer landscape with the stated intention of improving enforcement and advice provision in particular. Consumer Focus was abolished and its statutory functions for energy and post transferred as a Regulated Industries Unit (temporarily called Consumer Futures) to Citizens Advice (CA) in 2014. Citizens Advice with its strong brand and established community networks was intended to be the lead national public-funded consumer advocate. In part, the move was catalysed by: government's commitment to 'the bonfire of the quangos', financial pressures; a difference in political affiliations between the new government and the leadership of CF; and a shift in focus from the importance of collective consumer advocacy to the empowerment of individual consumers via advice provision. Alongside this, a range of other changes were made, notably:
 - The responsibilities of the Office of Fair Trading were reduced and a new National Trading Standards Board established.

- The Competition and Markets Authority was set up and assumed many of the functions of the previously existing Competition Commission and Office of Fair Trading, which were abolished.
- The Consumer Protection Partnership (CPP) was created, to bring together the consumer protection organisations. Its purpose was to identify the areas of greatest consumer detriment, where there were gaps in protection, and take coordinated, collective action as necessary.



The survival of specialist watchdogs

- Despite the rationalisation of stand-alone councils some remain/ed. There were doubts whether Citizens Advice had sufficient knowledge and expertise in transport and water to take on these functions. Also, the Gray Review 2011 was broadly supportive of CCWater and there were concerns about the timing of any disruption on the price control process. In addition, in transport, government recognised the benefit that could come from consumer groups looking across modes of transport. Passenger Focus, now called Transport Focus, therefore had its remit extended, first in 2010 and again in 2015. It now covers bus, tram, and coach passengers in England (outside London) and England's major road users as well as GB rail users.



The consumer voice within companies

- While not new, in recent years, support for consumer bodies within companies appears to be growing, alongside calls for big business to be more accountable. The use of customer challenge groups by monopoly companies during the 2014 water price review process was largely viewed as an effective way to reduce regulatory interference and refocus companies' attention on their consumers rather than regulatory compliance. In the competitive pensions sector, in 2015, the Financial Conduct Authority introduced new rules for certain companies to establish and maintain Independent Governance Committees, which performed an assurance role. More recently the Prime Minister Theresa May and the BEIS Committee have turned their attention to the benefits of consumer and worker voices on boards.



New consumer voices

- While the statutory consumer bodies have been rationalised, digital technology and the growth of social media have resulted in new ways for people to engage, offer ideas and ensure their voice is heard. For example, alongside Which?, Money Saving Expert is increasingly seen as the leading mainstream consumer champion, involved in not just advice provision but advocacy. Similarly, the growth in 'big data' and national and local social media platforms such as 38 Degrees, change.org, twitter and streetlife offer new opportunities to understand and engage with the diversity of consumer and citizen voices.

What are the strengths and weakness of the consumer voice within the regulator?

Overview

All regulators have some kind of dedicated consumer panel or advisory group/s, which they can consult on policy issues and strategy to help them better understand the consumer voice. These fall into two high-level categories:

1. *Statutory consumer panels/committees* - bodies that regulators must under statute establish and maintain to represent the interests of consumers e.g. the Financial Services Consumer Panel, the Legal Services Consumer Panel and the Communications Consumer Panel (CCP).
2. *Voluntary consumer bodies* - groups that regulators voluntarily set up. These may be:
 - standing groups e.g. the Civil Aviation Authority (CAA) Consumer Panel⁶, Ofcom's Consumer Forum for Communications, and the Office of Rail and Road's Consumer Expert Panel.
 - limited-term groups (often issue-specific) such as Ofgem's Consumer Challenge Group, which was set up to ensure the price control settlement is in the best interests of existing and future consumers.

It is not uncommon for regulators to have a number of types of consumer groups in operation at any one time. Most regulators have expert advisory panels that include consumer representation alongside industry and other interests e.g. Ofwat's Expert Advisory Group. In addition, some regulators have non-executive directors or lay members with consumer advocacy credentials e.g. the Bar Standards Board and Ofgem. The focus below is limited to our speakers' panels: the Financial Services Consumer Panel, the CCP and the Civil Aviation Authority Consumer Panel.

About the consumer panels

Financial Services Consumer Panel	Communications Consumer Panel	CAA Consumer Panel
<ul style="list-style-type: none"> Originally set up by the Financial Services Authority in December 1998. Made statutory in 2000 by the Financial Services and Markets Act. Duty transferred to the new Financial Conduct Authority with The Financial Services Act 2012. 	<ul style="list-style-type: none"> Communications Act 2003 established the Ofcom Consumer Panel. Also set up a separate Advisory Committee for Older and Disabled People and four Advisory Committees - for England, Scotland, Wales and Northern Ireland to represent the interests of people living in these areas. In 2009 it became the Communications Consumer Panel. 	<ul style="list-style-type: none"> Voluntary panel. Set up in October 2012. Replaced the Air Transport Users Council that was set up by the CAA in 2004 and abolished in March 2011.

⁶ <http://www.caa.co.uk/Our-work/About-us/Our-role/>

Role and activities

At a high level both the statutory panels have broadly the same role and undertake similar activities. They do not have decision-making powers but:

- advise their respective regulators on policy and strategy – acting as a ‘critical friend’ and champion of consumer interests.
- undertake research to complement or extend that conducted by the regulator.
- represent the interests of consumers externally e.g. via meetings, speaking at or hosting events, submitting formal consultation responses, media releases.

The voluntary CAA Consumer Panel, by contrast, undertakes less activity and does not carry out independent research. None of the panels provide consumer facing advice or handle complaints.

Operation

The Financial Services Consumer Panel meets every two weeks alternating between full panel meetings and meetings of two working groups. The CCP meets once a month and the CAA Consumer Panel members meet six times per year.

Powers

There are legal and administrative duties on regulators to:

- provide any information that they hold, that panels need to carry out their work.
- listen to and consider representation from the panels.

Panel members are able to speak out publicly, albeit with a ‘no surprises’ policy with the regulator. The CAA Consumer Panel has no powers to require the CAA to consider its advice and challenge but in practice the Panel reports that its advice is proactively sought and its challenges treated seriously and responded to in full.

Budgets and funding

Regulators must provide sufficient resources for statutory panels to do their work. The CAA funds its panel members to attend meetings with the CAA and with stakeholders but not wider activity.

Panel	Actual spend 2015/16 £	Breakdown £
Communications Consumer Panel ⁷	369,196	Members fees: 109,556, Expenses: 16,314, Support: 243,326 (secretariat, research publications).
The Financial Services Consumer Panel ⁸	492,000	Members fees: 298,000 Professional fees: 91,000 Sundries: 103,000 (including recruitment)

⁷ <http://www.communicationsconsumerpanel.org.uk/annual-report-current-year/current-year>

⁸ https://www.fs-cp.org.uk/sites/default/files/financial_services_consumer_panel_annual_report_2015-2016_0.pdf

The CAA Consumer Panel	36,000	Members fees plus refreshments for meetings and travel.
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Membership

All of the panels are made up of non-executives with a wide variety of expertise and experience, who are appointed by the regulator. For the statutory bodies the chair is appointed with the approval of the relevant Secretary of State. Members are paid. Panels tend to have between 8-14 members with flexibility for sub committees. While representation rules between panels vary, all are expected to have a fair degree of representation from those who use or who might use the products or services of that sector.

Accountability and independence

While located within the regulator, the panels operate independently from it. The statutory panels have separate websites and publish annual reports. The CAA Panel also publishes an annual report but it does not have a separate website. All of the panels welcome feedback from the public.

Some of the potential strengths and limitations of consumer panels compared to the consumer voice outside the regulator or within the regulated company are outlined below:

Potential strengths	Potential limitations
<ul style="list-style-type: none"> ✓ Consumer panels are seen as a trusted 'critical friend', which arguably enables greater influence over decision-making. ✓ It is easier to input into the decision-making process in a more timely way and earlier in the process. ✓ MOUs allow the exchange of confidential information to inform policy consideration (statutory stand-alone consumer bodies also have MOUs with the regulator and other key bodies). ✓ Panels single sector specialism gives them a clearer focus than some bodies that represent consumers over multiple sectors. ✓ They are low cost compared to running separate consumer bodies. ✓ They are consistently available for consultation. ✓ They are arguably uniquely placed to advise on complex issues and make the trade-offs in decisions. 	<ul style="list-style-type: none"> • While some panels have an external profile and voice, they can be limited in their ability to campaign for a particular view or initiative. • There is a perceived lack of independence from the regulator and the danger of capture. • There is a perceived lack of legitimacy and representativeness – other bodies have stronger evidence bases and are closer to 'real life consumers'. • They have no real powers and risk being ignored. • They have comparatively few resources, which limits their impact. • Their effectiveness in engaging with the regulator and external consumer voices is highly dependent on a small number of personalities.

Conference report

The speakers in this session were:

- **Sue Lewis**, Chair, Financial Services Consumer Panel
- **Chris Holland**, Member for England, Communications Consumer Panel
- **Keith Richards**, Chair, Civil Aviation Authority Consumer Panel



Above: Keith Richards

Presentations – key points

A key benefit of panels being “in the tent,” as Sue Lewis put it, is the ability to shape regulatory policy in consumer interests from the get-go. Lewis said the FCA brings her panel policy in its formative stages for input. Chris Holland stressed the value of this: access to “privileged and sensitive information” that he argued is simply not available to external consumer advocates. He added that there is also the matter of regular access to regulatory decision makers and other key stakeholders; his panel meets monthly with senior Ofcom executives to “advise, challenge and monitor”; regularly with telecom providers where “we shine a light into some very dark corners sometimes”; and with others on an ad hoc basis.

Keith Richards suggested the key question to ask is: is the consumer interest being brought to the fore? His view was that consumers benefit from regulators listening to a trusted considered voice – perhaps more than a loud ‘shouty’ one. In the case of the CAA, his group had helped get the themes of choice, value and fair treatment for consumers “embedded” in regulatory thinking.

Compared to other forms of consumer representation, those internal to the regulator are very low cost. Both Lewis and Holland said they had small budgets that they used,

importantly, for research to ensure their positions are evidence-based. Holland gave the examples of recent research on older customers' service experience and forthcoming research on consumer attitudes to the use of their personal data. Richards had no budget but said his panel had been able to influence the CAA to expand the research it undertakes, from a couple of questions to passengers at airports to a large scale tracker study looking at multiple issues.

However, being in the tent can compromise independence. Lewis remarked that complete frankness of opinion in public did not always sit comfortably with access to privileged information. She said she had to be both careful to guard her independence and not use privileged information to criticize the regulator.

Nor was there any getting away from the fact that low or no budgets are limiting, in terms of commissioning research and expert opinion, but also in terms of day to day operation. Lewis said "everyone has a day job" on her panel, although added she had excellent support from a full time FCA secretariat. Given the "vast scope" of the financial services sector (the FCA regulates some 56,000 firms) and the fact that "banking chiefs have access to government at a very high level", there is a heavy weight on the panel's shoulders. Lewis said her group often felt like "the lone consumer voice against a powerful industry lobby".

The speakers also expressed that their hands would be strengthened if they had formal or statutory powers.

Issues raised in discussion

No public criticism?

Robert Laslett of the Zurich Independent Governance Committee asked whether the other panel members felt as Lewis did regarding the ability to publicly criticise their regulator. Holland said the Panel does not feel similarly constrained but there is a 'no surprises' agreement – in terms of an MoU with Ofcom, while Richards said there was an implicit agreement of that sort with the CAA – plus he would have to use the CAA communications team to get any criticism out!

Turn down the volume?

There was follow up discussion about the relative merits of consumer advocates making a lot of 'noise' versus being quietly influential. Richards emphasised his was not a "big shouty group"; it was more about understanding what is possible and giving the regulator a realistic considered opinion.

Performance evaluation:

One delegate asked the speakers how they evaluate their success. Lewis and Holland's groups had some mechanisms in place – for instance, keeping an impact log and a record of consultation responses and feedback and so on. Richards said his panel was only in its fourth year of operation, so thoughts are only just turning to evaluation methods.

What are the strengths and weakness of the consumer voice outside of the regulator?

Overview

There are a large number of bodies representing consumer and citizen issues outside of the regulator. These fall into two main categories:

- *Statutory voices* - e.g. dedicated consumer watchdogs such as CCWater, Transport Focus, London TravelWatch, and Citizens Advice (in the case of its post, electricity and gas consumer functions).
- *Non-statutory voices* - which can vary in terms of size, funding, operation, expertise and ability to engage. For example:
 - consumer groups e.g. Which? Money Saving Expert, CA in other regulated sectors.
 - user-specific voices e.g. Scope representing disabled people, AgeUK concerned about older people, and ACRE representing rural consumers etc.
 - issue-orientated bodies e.g. environmental groups such as Green Alliance, privacy groups such as Privacy International, or sector-specific groups such as Campaign for Better Transport etc.
 - political voices e.g. All Party Groups, MPs and select committees representing citizens and their constituents.

This section focuses on three bodies with statutory functions - CCWater, Transport Focus, and Citizens Advice.

About

CCWater	Transport Focus	Citizens Advice (CA)
<ul style="list-style-type: none"> NDPB sponsored by Defra and the Welsh Government. Represents the interests of household and all business consumers of water and sewerage services in England and Wales. Particular focus on certain vulnerable consumer groups. Established October 2005 by Water Act 2003. Has four regional committees in England (Northern, Central 	<ul style="list-style-type: none"> NDPB sponsored by Department for Transport (DfT). Represents Britain's rail, bus, coach and tram passengers in England (outside of London) and England's major roads (Strategic Road Network (SRN)) users. This includes motorists, freight, and business users as well as those who walk or cycle on the network. Supports improved transport accessibility and hosts an Accessibility Forum to better understand the issues people face. Recreated in 2005 under the Railways Act. Roots go back to the Transport Act 	<ul style="list-style-type: none"> Registered charity and a company limited by guarantee. Mission is to 'provide advice that helps people overcome their problems and come together to campaign on the big issues when their voices can be heard'. Strong focus on vulnerable customers. Started in 1939 and gained statutory duties for domestic and micro-business energy and post consumers in 2014. Also represents customers in other regulated sectors e.g. financial services, communications. Supports the Citizens

and Eastern, London and South East and Western) and one in Wales.	1947. • Remit expanded by The Passengers Council (Non-Railway Functions) Order 2010 and again in March 2015 to cover SRN users, under the Infrastructure Act 2015. It then changed its name to Transport Focus.	Advice Bureaux - a network which delivers advice services to people from over 2,500 community locations in England and Wales, run by 338 individual charities.
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Role and activities

All three organisations carry out the following activities:

- undertake research and market monitoring to understand current and future consumer concerns.
- make proposals, and provide advice and information to decision makers including via meetings, attendance at events, responding to consultations.
- carry out media work and campaigning.
- provide free advice and information to consumers.
- publish information on company performance e.g. complaints.
- undertake investigations into areas of consumer concern.

CA in practice has more of a culture of campaigning than the other bodies. Both CCWater and Transport Focus have a statutory responsibility to act as the consumer advocate in cases where the consumer has been unable to reach agreement with the water company or train operator respectively. Citizens Advice only investigates and handles individual complaints on behalf of vulnerable post and energy consumers⁹.

Powers

All three organisations:

- have information gathering powers e.g. Section 24 of the CEAR Act (2007) allows Citizens Advice to access and publish certain information from regulators and companies. In energy and post these powers are regularly used during investigations.
- establish Memorandums of Understanding (MOUs) with relevant organisations to facilitate access to information.
- have sizeable research budgets e.g. Transport Focus received £900,000 for the National Rail Passenger Survey (NRPS) and £225,000 for the Bus Passenger Survey (BPS) in 2015/16.

CCWater and CA both have super complaint powers (along with Which?) but Transport Focus does not. Super-complaint powers enable them to fast-track consumer issues of concern to a higher body, but this power is rarely used by the statutory bodies.

Accountability and independence:

- All three organisations are run by full-time professional staff and led by a Board.
- They recruit for posts via open competition but in the case of CCWater and Transport Focus, their Board appointments are made by government/s.
- They all publish annual reports and accounts.

⁹ <http://www.cas.org.uk/about-us/consumer-advice/extra-help-unit>

Budgets, funding and resources

	Budget 2015/16 £	Funded by	Staff
CCWater ¹⁰	5,724,000	Water and sewerage licence fees	9 board members 68 staff 22 local consumer advocates
Citizens Advice ¹¹	3,002,708 – energy 2,345,602 – post 730,274 – cross sector There is an additional 648,100 for Citizens Advice Scotland	Electricity, gas and postal services licence fees plus government funding	Not available
Transport Focus ¹²	5,039,000 - bus and rail users plus 1,033,000 - road users.	Grant in aid from DfT	10 board members 51 members of staff

Some of the potential strengths and limitations of a stand-alone consumer body compared to the consumer voice inside the regulator or within the regulated company are outlined below:

Potential strengths	Potential limitations
<ul style="list-style-type: none"> ✓ Stronger powers of investigation. ✓ Perceived legitimacy thanks to a robust evidence base including access to complaints data, research, and community outreach. ✓ Early warning of consumer detriment when things go wrong. ✓ Expertise - breadth of up to date professional consumer knowledge among full-time staff. ✓ Are able to campaign and use media to raise awareness. ✓ Independent from regulators and business. ✓ Focus on current and future consumer concerns. ✓ Better resourced than consumer panels and groups within the regulated industry. 	<ul style="list-style-type: none"> • Ability to engage early in the policy process is dependent on individual relationships with government and regulators. • Relatively resource intensive though arguably very cost effective. • In the case of Citizens Advice, arguably a perceived risk that the campaigns and advice focus of the organisation may detract from advocacy work on more complex, less popular, technical long-term issues.

¹⁰ <http://www.ccwater.org.uk/wp-content/uploads/2016/07/CCWater-Annual-Report-Accounts-2015-to-2016.pdf>

¹¹ [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/CitizensAdviceConsumerchampion-Finalworkplanfor201617%20\(3\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/CitizensAdviceConsumerchampion-Finalworkplanfor201617%20(3).pdf)

¹² <http://d3ce36w5wymxj.cloudfront.net/wp-content/uploads/2016/08/01135019/FINAL-annual-report.pdf>

Conference report

The speakers in this session were:

- **Alan Lovell**, Chair, CCWater
- **Stew Horne**, Principal Policy Manager, Energy Regulation, Citizens Advice
- **Jeff Halliwell**, Chair, Transport Focus



Left to right: Alan Lovell, Jeff Halliwell and Stew Horne

Presentations – key points

Alan Lovell summed up the sentiment of this group of speakers when he asserted CC Water had “achieved much more from being outside” of Ofwat than it could have done if it had stayed in. In those earlier days, he said the forerunner of CC Water had been a “Cinderella service”. As a stand-alone statutory consumer body, it had made “tremendous progress” – including driving complaints down since 2005, securing £20m+ rebates and compensation for customers, contributing to the provision of social tariffs by 19 out of 21 water companies, and bringing Ofwat’s “over generosity” to shareholders at the expense of customers to the attention of policymakers.

Jeff Halliwell agreed with the sentiment, commenting he “couldn’t think of many benefits from being inside the regulator either”. He emphasised the strength of having “no conflict of interest...no duality – we just represent the passenger”. Lovell concurred that detachment from the regulator allowed real independence; referencing CC Water’s recent intervention on a domestic retail water market that called Ofwat’s optimistic attitude to account, Lovell said his organisation could offer “clear views which are not always in the direction Ofwat is seeking”.

Allied to complete independence is trust, which is crucial on many levels: in giving consumers confidence to approach and engage; in being listened to by regulators, companies and policymakers; and in raising the profile of issues in the media. One champion here is Citizens Advice. Horne said it is “highly trusted” by the media on the one hand and by the public on the other. At 97%, Horne said its “recognition metrics are amazing”, that its services had been used by four in ten people, and that its website

was visited by 100 people an hour. This means lots of people are getting help, but also that Citizens Advice is able to reap a “rich amount of data” and, from its national network of bureaux and phone helpline, “amazing real time information on what’s going on, on the ground”.

The consumer bodies outside the regulators, while offering good value, are significantly better resourced than those within, albeit from different sources (Lovell said CC Water cost 21p per customer per year; Halliwell that Transport Focus gets around 80% of its funding from Department for Transport grant-in-aid). Not only does this fund expert, full-time staff, but crucially independent research which the consumer bodies use to establish and champion customer views. For instance, Transport Focus conducts major national surveys of rail and bus passengers that it uses to influence policy and satisfaction/service measures and which in some cases are used to underpin rail franchise awards, and also used by companies as a part of management bonus schemes. Lovell said on top of research funding, CC Water’s budget enabled it to commission consultants and experts to test Ofwat’s assumptions in the customer interest.

The speakers saw few disadvantages in their position. Halliwell noted that relying for the most part on a government grant did bring uncertainty year to year. Lovell highlighted a “theoretical limitation” in that CC Water has no legal powers on complaints though this had proved irrelevant in practice. And he said his organisation was unable to play a role in the creation of policy at the outset; its opportunity came “late in the day”. The overall message was that these downsides were more than offset by the benefits of separation from the regulator.

Issues raised in discussion

The timing of engagement:

One of the key contrasts between the first set of speakers and the second was when they are formally able to engage. Those within the regulator have the advantage of being systematically privy to information and policy concepts early, and hence the opportunity to shape it from the outset. Those outside are more dependent on individuals’ building trusted relationships with individual policy makers to ensure they are involved in early policy development. Sometimes they have to wait until policy has reached sufficient maturity to be externally shared. One delegate questioned how regulators might work towards getting external groups regular earlier sight of policy – a matter well worth further investigation.

Depth of pockets:

Another major difference between those inside and outside the regulatory stable is level of resourcing. ESAN’s Claire Milne pointed out those outside had around ten times more funding than those inside, and said that had to be a factor to consider. She noted too that the first group of speakers did not complain about tight resourcing, proposing this may be because they are expected to be smart with resources rather than to speak up for more. Horne agreed that better funding would be desirable and added that being able to demonstrate impact and value delivered for funding was important. Conference chair Roger Darlington commented that UK consumer representation in telecoms has relatively small budgets. The Australian Communications Consumer Action Network is funded by the Commonwealth of Australia under the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN has a four-year funding contract with an annual increase in accordance with CPI. Currently the annual budget is around Aus\$2M (about £1M) but some Aus\$300,000 (about £150,000) is used for a grant programme to various bidding organisations.

What are the strengths and weaknesses of the consumer voice within the regulated company?

Consumer voices within the regulated companies can be categorised as either:

1. *Mandatory* - required by the regulator and set up by the company e.g. Customer Challenge Groups (CCGs) in monopoly water companies, Independent Governance Committees (IGCs) in the insurance sector, or the CAA's proposed independent Customer Challenge Board for the Heathrow price control review 'H7'.
2. *Voluntary* - set up by the company e.g. the appointment of consumer champions on boards or prior to EE's acquisition by BT, EE'S External Advisory Board, provided feedback on its performance. Another example is energy network company Western Power Distribution's Customer Panel which they established in 2008. This meets quarterly and is consulted on priorities and strategy and drives change in the organisation. It consists of a pool of more than 30 members including representatives from community energy, health and fuel poverty, parish councils, industry and other charities. The CEO is directly involved and leads a discussion session at every meeting.

These bodies operate alongside other consumer voices e.g. in addition to CCWater, Citizens Advice, or the Communications, CAA, and financial services consumer panels. However, their focus is different. The 'mandatory' voices within the regulated company are focused on the company with a reporting line to the regulator. By contrast the panels are focused on advising the regulator but often with limited relationships to the regulated companies. The focus of this section is on Ofwat's CCGs and the FCA's IGCs.

About – background

Ofwat's Consumer Challenge Groups	FCA's Independent Governance Committees
<ul style="list-style-type: none"> • Expectation set in Ofwat's 2011 policy statement that all monopoly water companies should have a CCG. This document included the draft terms of reference. It was followed by future price limit principles in 2012, a new consumer engagement framework in 2014, and updated guidance on the role of the CCGs in May 2016. • The aim of the CCGs was to help refocus companies on their customers. It was prompted by: <ul style="list-style-type: none"> ○ concerns at price review (PR) 09 that companies' business plans did not adequately reflect consumer priorities. ○ the 2011 Gray review, which suggested that the regulator's micro-management of the companies' business plans was leading to a culture of compliance, rather than innovation. ○ a belief that water companies were overly focused on Ofwat's requirements rather than their customers' interests. 	<ul style="list-style-type: none"> • FCA rules introduced in April 2015 require pension firms that operate contract-based workplace personal pension schemes for employers, to establish and maintain IGCs. • This was prompted by concerns, which were crystallised by an Office of Fair Trading report, that competition in the workplace pensions industry was weak and could not be relied upon to drive value for money and good outcomes for customers.

Role and activities

The role of both the CCGs and the ICGs is to challenge the company and provide assurance to the regulator and industry, rather than consumer representation (though some members may represent customers views). Neither group has decision-making powers. In Ofwat's customer engagement policy statement (May 2016) the regulator outlined its expectations for the role of CCGs.

The CCG's role in the price review process is to:

- provide independent challenge to companies.
- provide independent assurance to Ofwat on the quality of the company's customer engagement and the degree to which it is reflected in its business plan. They are not expected to endorse the plan and must highlight any concerns about the ability of the company to meet their statutory obligations.
- submit an independent report to Ofwat at the same time as companies submit their business plans. This should include areas of challenge and disagreement.

Since the completion of Price Review 14, all water companies have voluntarily continued with a CCG-type body to monitor the delivery of the current business plans and provide the role of 'critical friend'. Increasingly the work of these CCGs will be to carry out for PR19 the formal role that was carried out for PR14.

The ICGs have a duty to:

- assess the on-going value for money of workplace personal pension schemes (though in practice there is no consensus around what value for money means in this context) e.g. looking at how money is invested, how the fund is performing, customer service levels and charges taken from the pension fund.
- act solely in the interests of relevant scheme members.
- raise any concerns with the provider's board.
- escalate their concerns to the FCA if necessary.
- report annually on what they have done.

ICGs have a duty to focus in particular on the default funds of the schemes operated by their provider.

Operation and membership

Ofwat does not prescribe CCGs terms of reference or how they should operate.

Consequently there is variation in how they are run and funded. However:

- Ofwat encourages transparency around funding arrangements, recruitment and governance.
- Chairs should not represent particular organisations or groups of customers.
- Membership must reflect local circumstances and challenges and include representatives from CCWater and if possible a consumer debt-advisory body.
- The environmental and drinking water quality regulators are expected to have a significant role in informing CCG discussions (though in practice there are arguably resource challenges around this).
- Ofwat expects companies to ensure that their relationship with the CCG is independent.
- Groups should have access to non-executive directors on the Board and appropriate information to do their work.

ICGs have a minimum of five members, the majority of whom must be independent, including an independent chair. The companies must:

- recruit independent IGC members through an open and transparent process.
- ensure that the IGC has sufficient collective expertise and experience.

- ensure that members' views can be directly represented to the IGC.
- provide the IGC with the information and resources it needs.
- take reasonable steps to address any concerns raised by the IGC.
- explain in writing why the provider has decided to depart in any material way from any advice or recommendations made by the IGC.

Some of the potential strengths and limitations of a consumer voice within the regulated company compared to the consumer voice inside the regulator or a stand-alone consumer body are outlined below:

Potential strengths	Potential limitations
<ul style="list-style-type: none"> ✓ Can be effective at encouraging companies to be more consumer-centric e.g. the CCGs are recognised to have prompted a step change in the quality and quantity of consumer engagement during the last price control. The FCA is undertaking a review of the IGCs. ✓ Enables trusted, on-going input and challenge on policy and strategy which can be different from the 'business culture'. ✓ Increased customer engagement within companies offers the opportunity to remove regulatory agencies from much of the decision-making and refocus companies' attention on consumers. ✓ Having independent members with complementary skills increases company credibility. 	<ul style="list-style-type: none"> • It can be difficult for some members, especially those who are volunteers, to participate fully given the time commitment required. • Groups are often overly reliant on companies for information and may not always be given appropriate access to data or the full spectrum of options/views. • Group members can have variable levels of expertise and are not always equipped to deal with complex issues. This can result in some members dominating activities. • Perceived lack of independence when members are appointed and paid by the company.

Conference report

The speakers in this session were:

- **Anna Bradley**, Chair, Southern Water Customer Advisory Panel
- **Robert Laslett**, Member, Zurich Independent Governance Committee
- **Claire Simpson**, Director, UK Regulators Network



Above : Claire Simpson

Presentations – key points

In introducing this set of speakers, Roger Darlington observed this “third model” – of locating a consumer voice within a regulated company – had grown in popularity in the last few years, including in particular in water during the last price reviews. Claire Simpson explained that the UKRN had embarked on a project to examine the merits of provider-led challenge, in particular whether any best practice principles or models could be shared across regulated industries for the benefit of all. The work is underway now, with a view to publishing something next year.

As a practitioner, Anna Bradley expressed excitement at being one of the pioneers of the new model in water but pointed out directly that she was not a customer representative in her role as Chair of Southern Water’s Customer Advisory Panel. She explained that she was there to give a view on the way the company engaged with customers: its engagement technique and how the results of engagement were translated in company decisions. “So we are part of the company process, adding value to their business planning” she said, adding that as such it was “quite right” that she and her panel team should be paid.

Bradley called for an end to one of the accusations that has repeatedly been levelled against consumer voices within regulated companies since the model emerged: lack of independence. She urged: “It is really important that everyone in this room stops arguing about which is the most independent of the models. I don’t know anyone in consumer advocacy who isn’t independent.” She accepted that there was a need to address the appearance of a lack of independence though, and said this could be done through transparency and clear documentation – for instance through challenge logs. As the first set of speakers argued in relation to being in-house at the regulator, Bradley said proximity to the company offered the benefits of regular access at board

level, and, providing you can develop “the right kind of relationship” – one of openness and honesty – access to privileged information. The model could even lead to positive “cultural impacts” on the company, which could be crucial to embedding customer focus. She said the model offered a good opportunity to supplement national regulation by making provision for local or regional variation. This in turn could drive up benchmarks for regulatory use. “It is difficult to raise standards by diktat from the centre,” she observed.

Bradley added it was important to guard against “scope creep”, to consider longer term development, to spur companies to keep up the momentum on delivering for customers once the “low hanging fruit” is gone, and to appropriately handle non-local issues, such as major infrastructure investments.

Robert Laslett endorsed Bradley’s position on independence and access to information, adding that expert groups such as his could actually enhance the information readily available by making sense of it and extracting the most valuable nuggets for consumers. He also said consumer voices within regulated companies could strengthen their hand by working together, each ensuring it is keeping up sufficient pace and learning from the others’ work and experience. As for the challenges of the model, Laslett said success came down to “a small number of people speaking out”.

In his welcoming comments to the conference, BT’s Director of Group Industry Policy Julian Ashworth, stated his company always tries to treat customers properly. But he conceded it may not always get it right. Ashworth emphasised that the UK performed very well now against international benchmarks on communications “on price, coverage, access and affordability” and referenced the £20 billion BT has invested in the UK in all aspects of its offering – “products and services that have gone from nice to have to must have”. He identified “broadening and deepening customer relations” as of critical importance, and welcomed communications consumer groups as “a critical friend to the industry” – though he joked he wished sometimes they were more friend and less critic! He also called on them to protect the rights of communications consumers more broadly – in particular, he said he would like to hear more from them on proposed 400% business rate increases for network use.

Issues raised in discussion

Consumer representation on boards:

Which?’s Simon Markell drew attention to the wider context of Theresa May’s policy of putting consumers on company boards and the links between that and the model of citing a consumer voice within the regulated company. How the policy plays out in practice is yet to be seen.

Demarcation of roles:

Water UK’s Rob Wesley pointed out that economic regulators themselves have a duty to protect consumer interests, and raised the issue of how the various models may fit or be in tension with how each regulator interprets that duty. Bradley commented that clarity between the various roles is vital, adding that at the last water price review, roles and responsibilities were foggier than desirable.

Further reading:

- [Ofwat's customer engagement policy statement and expectations for PR19](http://www.ofwat.gov.uk/wp-content/uploads/2015/12/pap_pos20160525w2020cust.pdf) (May 2016) - http://www.ofwat.gov.uk/wp-content/uploads/2015/12/pap_pos20160525w2020cust.pdf
- [FCA documents on the Independent Governance Committees](https://www.fca.org.uk/search-results?search_term=independent%20governance%20committees) https://www.fca.org.uk/search-results?search_term=independent%20governance%20committees
- [Overview of the role of and a list of Water CCGs](http://www.ofwat.gov.uk/regulated-companies/price-review/2019-price-review/customer-challenge-groups/) <http://www.ofwat.gov.uk/regulated-companies/price-review/2019-price-review/customer-challenge-groups/>
- UKWIR. [The future role of customer and stakeholder engagement in the water sector](#). Report Ref No. 15/CU/03



Above: Jeff Halliwell – Chair, Transport Focus

PART 2: METHODOLOGIES

There are a large number of ways in which decision-makers can understand consumer and citizen's experiences and views, including willingness to pay for different levels of service. This includes, but is not limited to: a range of qualitative and quantitative research, such as face to face interviews and omnibus surveys; use of market monitoring and consumer intelligence data, including complaints, switching levels or automatic payments made for customer service failings; and social media data e.g. from twitter – to name just a few. In monopoly markets where customers are not able to switch away from their provider, it is especially important that research is robust, meaningful and informs company strategies. This section discusses a few research approaches that are available to better understand the consumer voice.



Left to right: Martin Coppack, FCA and Roger Darlington, Chair ESAN

How can behavioural insights help us to understand what customers want?

About

Behavioural Insights (BIs) is an umbrella term used to describe a range of models and learning about how humans behave and make decisions in every day life. It draws on insights from multidisciplinary research in fields such as economics, psychology, sociology and neuroscience. Proponents argue that BIs can be used to deliver more effective and efficient services and improve outcomes for consumers and citizens.

Strictly speaking BIs is different from behavioural economics, which involves applying psychological insights to economic models to account for what are seen as systematic errors or 'biases' in human decision-making. Similarly while related, it is also different from 'nudge' approaches, which has a focus on tweaking people's 'choice architectures'¹³ to limit or utilise the impact of these 'predictable biases' and therefore help people make 'better decisions'. However, often in common parlance, and for simplicity therefore in this paper, the terms are used interchangeably.

Context

BIs approaches are increasingly being considered by decision-makers in the UK and overseas when designing and testing policy interventions. Both the FCA and Ofgem, for example, have dedicated behavioural units. The Behavioural Insights Team (BIT) and Citizens Advice also recently published "Applying behavioural insights to regulated markets" which outlines how BIs can improve regulation, incentives and information provision.

Background

While not new, BIs and behavioural economics grew in popularity with publications such as 'Predictably Irrational', 'Nudge' and 'Thinking Fast and Slow'. Broadly speaking, the approaches challenged the traditional thinking on public policy making, and in particular classic economic thinking that people behave in rationally self-interested ways e.g. if you give customers information on price they will proactively switch to the cheapest deal as it is in their interests to do so. BIs approaches recognise that people do not always behave in economically rational ways and that there are a wide-range of potential factors that influence their decisions and behaviour. These include not only behavioural biases but also other personal factors and social and environmental influences among others.

The Behavioural Insights Team

In 2010, the Cabinet Office set up the Behavioural Insights Team (BIT) (also known as the Nudge Unit). BIT draws on learning from behavioural science to design more effective public policy interventions that are more in line with how people really behave. They also promote the use of insights to enable (but not force) socially beneficial choices that are believed to be better for the individual. BIT became a social purpose company in 2014, jointly owned by the UK Government, Nesta (the innovation charity) and its employees. Key to BIT's methodology is an evidence-based and iterative approach. They are strong proponents of the use of randomised controlled

¹³ Choice architecture is the design of different ways in which **choices** can be presented to consumers, and the impact of that presentation on consumer decision-making.

trials (RCTs) and other robust research methods through their ‘test, learn, adapt’ approach¹⁴.

Understanding the consumer voice – use of BIs

Behavioural insights can be applied to almost every part of the consumer engagement and communications process to help better understand the customer and citizen voice as well as to policy development, implementation, trialling and enforcement.

Key behavioural insights

In practice there are scores of social and behavioural theories and models with different and sometimes contradictory perspectives on the root cause of problems, how they should be addressed and how interventions should be evaluated. The GSR Behaviour Change Knowledge Review has a good overview¹⁵. Below is a basic selection of some recognised influences on behaviour:

1. Personal factors

Personal factors influence behaviour and decision-making. These include knowledge and awareness, attitudes, habits and routines. In particular, values do not always lead to action (*‘the Value Action Gap’*) as is frequently seen with action on climate change. People’s *‘self-efficacy’* or perceived ability to carry out an action successfully, will also determine how achievable or appropriate they think a solution will be or how willing they will be to engage. Emotions also strongly influence responses. When engaging on policy issues, therefore, it is important to recognise factors that are likely to have an emotional response.

Mental shortcuts

People have systematic biases and adopt mental shortcuts (heuristics) or ‘rules of thumb’ when making decisions. The more pressure they are under, the more shortcuts they use. The design of ‘choice architecture’ and time available for decisions will therefore have an impact on the outcome. In particular it is worth noting:

- **Representativeness** - people make decisions based on what has happened/they have seen happen before, rather than weighing up all the possibilities.
- **Availability/simulation** - how easily people can recall or imagine something happening impacts how likely they are to believe it will happen. This has implications, for example, when seeking views on future issues or probabilities.

Biases

Internal biases mean people’s responses are not always fully rational. Understanding these biases can help improve research and engagement approaches. BIT identifies a number of behavioural biases in its paper on applying behavioural insights to regulated markets and related documents. At a high level these include:

- **Status quo** – people have a natural preference for the status quo (inertia). When faced with a difficult or complex choice, their tendency is to carry on doing what they have always done to avoid making a decision.
- **Anchoring** – people are heavily influenced by the framing of questions. For example, if you ask how much people are willing to pay, the majority will opt for the default option (if they think it is reasonable).

¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62529/TLA-1906126.pdf

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498064/Behaviour-change_practical_guide_tcm6-9696.pdf

- **Choice overload** – too much information can lead to inertia and choice or information overload. This is especially pronounced the less knowledge people have. Choice overload is more likely when there are time constraints or complex sets of choices. It is more likely to lead to sub-optimal decisions and is a key reason to keep communications short and easy to engage with.
- **Framing bias** – the way information is presented can have a significant effect on people's preferences and decisions.
- **Present bias** – people give disproportionate emphasis to the present and heavily discount the future e.g. they prefer to have money now, rather than pay into a pension for the future. They give current benefits and costs disproportionate weight over future benefits and costs. The extent to which they will disregard future gain (the discount rate) increases the more remote the issue appears to be with those in poverty or used to financial uncertainty tending to be even more likely to discount future gain.
- **Temporal effect** – not only how, but when information is presented is key to engagement. Depending on the activity, people are more likely to take action at key 'trigger points'.
- **Over confidence bias** – consumers tend to overestimate their abilities and knowledge. Those least knowledgeable are often the most overconfident.
- **Scarcity mind-set** – when people are under financial pressure (preoccupied with scarcity), they have less attention or 'mental bandwidth' to give to the rest of their lives. This can result in greater reliance upon the kind of biases and heuristics described above, though this should not discount the fact that those on low incomes are often more likely to be financially savvy due to the greater need for (and more practice at) saving money.
- **Loss aversion** – most people tend to put more effort into avoiding loss than ensuring gain.

2. Social factors

Social norms have a strong influence on behaviour. Social norms vary by group i.e. young people may have very different norms than the elderly. People tend to underestimate the extent to which other people's opinions influence their views or the degree to which they want to be like everyone else (**'normalisation'**).

3. Environmental factors

These tend to be factors over which people have less control. They include i) local environmental factors that can either facilitate or act as barriers to activity (i.e. the area in which an individual lives, their local shops and facilities) and ii) the wider macro-environmental factors, such as the economy, taxation, or technology.

Some strengths and potential limitations of BIs:

Potential strengths	Potential limitations
<ul style="list-style-type: none"> ✓ A powerful tool to deliver cost-efficient research and policy solutions, which are more in line with how humans really behave rather than what they say they do. ✓ It can be applied throughout the policy, research or communications cycle. ✓ BIs informed policy and communications make it easier for people to change their behaviour and engage effectively. ✓ Behavioural science uses an empirical approach allowing for more open and direct integration of evidence gathering and policy development. 	<ul style="list-style-type: none"> • Behavioural insights are important but only part of the picture, particularly for complex issues such as tackling climate change or resilience. Traditional systems-wide approaches to policy solutions are still needed. • BIs approaches are not the best fit for understanding views on future consumer issues or probabilities unless you can simulate scenarios. • The focus on behaviour risks narrowing research and policy agendas to focus on consumers' behavioural flaws rather than bigger structural questions. It is essential to consider not just personal factors but also social and environmental influences. • Further work is needed on the long-term impact of BIs approaches. • There is insufficient sharing of knowledge and learning on BIs, in particular about what does not work. • Ethical concerns have been raised about the use of nudges and behavioural insights for policy making. Some are uncomfortable with what they see as government manipulating people's choices however subtly.

Conference report

The speakers in this session were:

- **Elisabeth Costa**, Head of Consumers, Energy & Sustainability, Behavioural Insights Team
- **Matthew Upton**, Head of Consumer Team, Citizens Advice



Above: Elisabeth Costa

Presentations – key points

Behavioural science and economics are no longer new concepts, but interest in behavioural insights in regulated markets is timely in light of the recent Competition and Markets Authority (CMA) investigations in energy and banking. Elisabeth Costa detailed a project her team has worked on, commissioned by Citizens Advice, which considered why regulated markets are not delivering the best outcomes for consumers, the behavioural biases in play, and what a new vision might look like. It found human behaviour “systematically strays” from ‘the rational’ – hence many overpay for mobile contracts and 10m households could save £300 a piece by switching energy supplier, but do not. Upton commented that “I despise the terminology of rational/irrational” because what we label as irrational behaviour is simply human; in fact ‘irrational’ behaviour should be the standard economic model.

One behavioural bias is a preference to stick with the default option. Costa noted strategies that factor this in are possible – for example, the new model for workplace pensions has been devised with an opt-out requirement, rather than opt-in. This has led to a dramatic increase in the number of people with workplace pension coverage. Upton pointed out existing arrangements sometimes exploit our behavioural biases – for instance, overdraft fees play on our expectation that we can stay within our overdraft limits, when patently many cannot.

She considered what a well functioning market might look like from a consumer point of view: Is market information clear? Can customers understand their bills? How many are not getting a bad deal? Citizens Advice data on requests for assistance is interesting

here: Costa presented a slide which showed approaches for help on payday loans dropped off once regulation of that segment started.

Upton said establishing behavioural insights raises the key question of how far we should mitigate biases. Thinking is maturing from the path of assuming the consumer must change to overcome inertia, to a path which accepts a more sophisticated interplay of inertia and loyalty. He asserted that there is growing acceptance at policy level that “competition will not save the day” and a growing acceptance that intervention – “smart regulation and smart nudges” – is appropriate. The trick would be in getting the right balance between softer nudges and stronger interventions.

Issues raised in discussion

Leave well alone?

One delegate felt behavioural insights was based on the premise that customers do not know what they want; that they need to be nudged – even bullied – into switching. If they are happy, shouldn’t they be left alone? Costa agreed “consumer choice is paramount” and said customers should always have options – for instance, to opt out of a workplace pension.

Water switching?

Given established inertia in markets where the prize to switch is considerably more than it would be in water (a saving of £8 per year at best), was it wise to pursue a household water market? The speakers said lessons from other markets should be taken into consideration as the government makes a decision on this matter; however, that water would have a clean slate with which to start.

Rescue remedies:

Which?’s Simon Markell suggested behavioural insights could be used to test the efficacy of market remedies set by the CMA to speed up the delivery of benefits for customers. Costa observed there should be an ongoing programme of testing and refinement of remedies, not just a one set of remedies issued at a single point in time.

Further reading:

- Costa, King, Dutta and Algate (2016). [Applying behavioural insights to regulated markets](http://www.behaviouralinsights.co.uk/consumer-affairs/applying-behavioural-insights-to-regulated-markets/). The Behavioural Insights Team for Citizens Advice. <http://www.behaviouralinsights.co.uk/consumer-affairs/applying-behavioural-insights-to-regulated-markets/>
- Ariely (2008). Predictably Irrational: The Hidden Forces that Shape our Decisions. HarperCollins: New York, USA.
- Thaler, and Sunstein (2008). Nudge: Improving Decisions About Health, Wealth, and Happiness. Yale University Press: New Haven, USA.
- GCN and COI. [Communications and behaviour change](http://www.socialmarketing-toolbox.com/sites/default/files/433_1261695485COICOMMUNICATIONSANDBEHAVIOURCHANGE.pdf). http://www.socialmarketing-toolbox.com/sites/default/files/433_1261695485COICOMMUNICATIONSANDBEHAVIOURCHANGE.pdf
- [Behavioural Insights Applied to Policy. European Report](http://publications.jrc.ec.europa.eu/repository/bitstream/JRC100146/kjna27726enn_new.pdf) (2106). http://publications.jrc.ec.europa.eu/repository/bitstream/JRC100146/kjna27726enn_new.pdf
- Brooks, D. The Social Animal (2011).

How can consumer and citizen groups be more involved in policy development by regulators?

About

As noted, alongside the statutory bodies discussed, there are huge number of non-statutory groups that represent the views of different consumers and citizens. These include charities, NGOs, private companies, community groups, parliamentary groups, social media campaigns, among others. These groups can vary enormously, not only in terms of their structure and purpose, but also in size, expertise, organisation, resources and how they communicate and engage.

Clearly it is not practical or worthwhile for regulators to have contact with all these groups, but from time to time any number may have an interest in a particular policy or be able to inform or drive policy discussions. It is important therefore that as far as is possible, they have the opportunity to do so. Indeed, it is widely recognised that effective engagement by the right groups at the right time in the decision-making process can improve policy outcomes, increase the legitimacy of decisions made, and help both regulators and groups achieve their respective aims. Engagement is of value at every stage of the decision-making process, from the development of the initial policy idea, to follow-up activity on the impact of changes following a decision.

The debate

Regulators have legal obligations that influence the manner in which they formulate policy. For example, the Energy Act 2004 requires Ofgem to have regard to the principles of best regulatory practice¹⁶. These require it to be transparent, accountable, consistent, proportionate, and target action where it is most needed. In recent years a number of concerns have been raised about the policy development process. These include but are not limited to, that:

- Engagement by consumer and citizen groups has been worryingly low on some important policy issues.
- Policy-makers treat consultation with consumer groups as a 'tick-box' activity - consult late in the policy development process, rather than at the initial stages, and give groups insufficient opportunities or time to engage.
- Engagement approaches have failed to adapt to the changing consumer landscape, including the growth of digital technology and social media platforms. There continues to be an overreliance on formal documents and responses, as opposed to using digital tools for open, and iterative on-going engagement.
- Regulators' approaches to policy development can show insufficient flexibility to meet the diverse engagement needs of different consumer and citizen groups.
- Some regulators lack a transparent and strategic approach to engagement. They appear to rely heavily on consulting a handful of groups (their 'usual suspects') or those groups that contact them. This risks a few organisations having disproportionate influence over the decision-making process while other important voices are consistently ignored or under-represented.

¹⁶ <https://www.ofgem.gov.uk/ofgem-publications/37043/guidance-ofgems-approach-consultation.pdf>

The challenges

There are a number of challenges for both regulators and consumer and citizen groups when looking to strengthen the consumer voice in policy development. These include but are not limited to:

	Awareness	Resources	Organisational/ cultural factors
Regulators	Policy makers can find it hard to identify groups with an interest in, appropriate expertise and time to contribute to policy development. Not all voices are equally well informed or legitimately representing interests. Staff can lack confidence or expertise in how to engage effectively with groups.	Policy makers can be subject to tight internal deadlines, which restrict the time available to consult. They may not have the resources or internal support to engage more creatively or proactively e.g. to travel to meet groups or undertake engagement activities.	Some regulators lack a culture of engagement beyond formal methods. Some parties fear external engagement especially via social media.
Consumer and citizen groups	Groups may not realise a policy is under discussion, may not know how to engage effectively or who to speak to, or may lack the expertise to understand the significance of a policy decision to those they represent.	Even when they want to, groups can find it hard to engage as they lack resources. This includes appropriately skilled staff, funds to travel to meetings, or time to engage in a timely way in particular, if at all.	If groups have an adversarial approach towards the regulator it can hinder engagement.

Engagement approaches

There are a number of ways in which consumer and citizen groups can be involved in policy development. Below are *some* of the most common approaches employed and a *selection* of potential strengths and limitations. There are many others.

Formal written consultations

Formal consultation typically involves publishing a document or letter on the regulator's website that seeks views on a set of issues and possible options. As policy develops more documents or letters may be published to seek further views.

Potential strengths	Potential limitations
<ul style="list-style-type: none"> ✓ Consultation is open to all to respond. ✓ The process is transparent with the range of responses and a rationale for why a decision was adopted, published. 	<ul style="list-style-type: none"> • Documents can be long, complex and technical. Groups may only have an interest in one or two issues, which are easy to miss. • Groups may not be aware of consultations, even if they sign up to regulator's news feeds, as these are not always flagged in a timely way. • In practice, this kind of formal consultation tends to be late in the policy making process when many decisions have effectively been made.

A number of regulators such as Ofcom have used consumer-friendly versions of written consultations, which are shorter, simpler and pull out the most relevant questions to consumer representatives. Arguably there is more that regulators could do to facilitate responses to written consultations. For example, they could develop more user-friendly online versions of consultations, which can easily be forwarded to multiple parties for input.

One to one meetings with groups

Regulators may have informal or formal meetings with consumer and citizen groups. These can happen at any stage in the policy development process, and may be initiated by either party.

Potential strengths	Potential limitations
<ul style="list-style-type: none"> ✓ It allows groups to initiate policy ideas and engage early in the process. ✓ Face to face contact can build trust and facilitate frank and open dialogue and an exchange of views. that might not be possible in the public domain. ✓ It can result in more collaborative and iterative policy development leading to more effective policy interventions. ✓ Regulators are able to tailor their engagement to the capacity of the group e.g. highlight particular questions of interest, explain the relevance of issues to them. 	<ul style="list-style-type: none"> • It can be resource intensive for regulators and consumer and citizen groups. • Arguably it can lack the transparency of other approaches if the minutes of meetings are not published.

Increasingly regulators are using conferencing technologies to facilitate remote meetings. This is particularly valuable to engage with groups located at a distance from the regulator. However, it is important that the service adopted is low cost or free for consumer representatives to use. As noted, identifying the right consumer groups to speak to and building trusted relationships can be challenging for policy makers. One solution is having a Partnership Team like the FCA's. This team owns and manages its relationships with consumer organisations.

Internal groups on policy issues

As noted in the previous section, all regulators have some kind of internal advisory group. These groups can also include consumer and citizen organisations e.g. Ofgem's Sustainable Development Advisory Group (SDAG) includes policy experts from Friends of the Earth, Citizens Advice, National Energy Action and the Centre for Sustainable Energy. This advises Ofgem on social and environmental policy.

Potential strengths	Potential limitations
<ul style="list-style-type: none">✓ Internal group is seen as a trusted 'critical friend', which enables greater influence over decision-making.✓ It is arguably easy to input into the decision-making process in a timely way and early in the process.✓ Groups are consistently available for consultation.	<ul style="list-style-type: none">• Only a limited number of organisations can participate.• Appointments to these groups are not always by open selection and therefore there is a risk of important views not being represented.• Group agendas tend to be set by the regulator.

Forums/existing networks

Regulators can engage with consumer groups via existing multi-group forums e.g. Ofgem recently sought views from the Essential Services Action Network's members, while Ofcom regularly shares thinking with the Consumer Forum for Communications. This can be regulator or group-prompted engagement.

Potential strengths	Potential limitations
<ul style="list-style-type: none">✓ Can be a time efficient way for the regulator to engage with multiple interest groups, and for consumer groups to engage with multiple parties.✓ Enables two-way consultation.✓ Can bring important issues to the attention of groups who subsequently respond to formal consultations.✓ The group dynamic facilitates the sharing of expertise across consumer organisations and can result in collective responses, which lightens the consultation burden on all parties.	<ul style="list-style-type: none">• Some groups may dominate the discussion or unduly influence others policy position.• It does not allow for a considered response and needs to be supported with more formal engagement.

Working groups/roundtables

With working groups or roundtables, consumer or citizen groups are invited to attend an event on the grounds of their knowledge or interest in the topic.

Potential strengths	Potential limitations
<ul style="list-style-type: none">✓ Facilitates informed discussions and enables views to be openly challenged in a constructive manner.✓ Can help identify where there is general consensus and disagreement so that formal consultation activity can be better-targeted.✓ Can improve understanding of the issues and different perspectives, resulting in higher quality engagement and written responses by groups.	<ul style="list-style-type: none">• Organisations will not share certain views or information in a public arena.• Discussions are not always open. There can be a degree of gamesmanship, by companies in particular, who say things informally, that they would not put on the record.• Meeting notes are not always shared in a timely manner limiting their use for participants.

Events

Most regulators speak at conferences and events, which are hosted by or attended by a range of consumer voices. Some regulators are more open to engagement than others. For example, the FCA and Ofcom have an easy to find mechanism on their website to request a speaker. Arguably most regulators could make better use of webinars and other time-limited and moderated discussion fora.

Potential strengths	Potential limitations
<ul style="list-style-type: none">✓ Enables groups and regulators to reach a wider audience.✓ Large scale gatherings can highlight the collective strength of opinion.✓ Opportunities to identify and meet new groups with expertise and an interest in engaging on a policy issue.	<ul style="list-style-type: none">• Contributions from a conference floor tend to be high level and can be confrontational.

UKRN principles of effective engagement

The UK Regulators Network (UKRN) is a member organisation formed of 13 of the UK's sectoral regulators¹⁷. Their paper on involving consumers in the development of regulatory policy has a good overview of the engagement and research methods employed by regulators and outlines four 'principles of effective engagement'. These are summarized below:

1. Tailored <ul style="list-style-type: none">• Give clear and realistic timeframes for input and be prepared to be flexible.• Keep consultation documents simple with language appropriate for the audience.• Investigate and use a range of research approaches.• Do not overburden consumer organisations with undue demands on what are often limited resources.	2. Inclusive <ul style="list-style-type: none">• Identify all relevant consumer cohorts (e.g. older consumers, consumers in vulnerable circumstances, consumers in different geographical regions).• Reject assumptions about 'average' or 'mainstream' consumers, which can lead to inappropriate one-size-fits-all policies.• Work to build consumers' and consumer bodies' capacity to engage.
3. Transparent <ul style="list-style-type: none">• Identify and communicate the aim of the consultation and role of consumer in the engagement process.• Be clear how input will be used - including managing expectations.• Credibly and openly report input including positive and negative and how input has been reconciled/reflected in decisions.• Publish findings from engagement in a timely manner and create further opportunities to share learning e.g. by making raw data available where possible.	4. Developing <ul style="list-style-type: none">• Establish indicators to measure the success of engagement strategies and activities, with a view to seeking on-going improvement.• Periodically review engagement strategies and processes• Regularly consult on effectiveness of engagement strategies with consumer bodies.• Benchmark against other regulators and public bodies, and learn from them by sharing experiences (good and bad) and findings through forums like the UKRN.

¹⁷ <http://www.ukrn.org.uk/>

Conference report

The speakers in this session were:

- **Martin Coppack**, Consumer Insight Department, Financial Conduct Authority
- **Zoe McLeod**, independent consultant



Above: Zoe McLeod

Presentations – key points

The speakers in this session offered some good practice examples of how to involve consumer and citizen groups in the development of policy. Why might you want to? Coppack pointed out that a UKRN paper made a case for regulators to understand the consumers they acted on behalf of; he added that there had been a “real appetite” to bring the consumer perspective into financial services regulation as the FSA morphed into the FCA. McLeod listed multiple benefits including better outcomes, early warning of problems, legitimacy, trust and co-creation of solutions.

Coppack detailed his work for the FCA. He created a team whose express purpose is to engage with consumer and special interest groups, and to make it easy for them to engage back, as consumer groups had said it can be difficult to influence big regulators – particularly for organisations that may be short on staff, low on funds and preoccupied with issues core to their purpose. He described how he kicked off the initiative by visiting target organisations, face to face to build rapport and trust. His unit now supports the ongoing interaction of multiple consumer interest groups: there are meetings three times a year, with all other communications tailored wherever possible to the needs of the consumer organisation e.g. phone/email/face to face at their offices. Care is taken to highlight relevant passages of regulatory documents and so on to make engagement less onerous for external stakeholders. The network Coppack has built up is used both to highlight particular problems – for instance, Macmillan has flagged the difficulty cancer survivors face in obtaining travel insurance – and to ensure the interests of consumers are represented and embedded in day-to-day FCA operations.

With 20 years under her belt in consumer advocacy, regulation and communications, Zoe McLeod had a lot of experiences to draw on in identifying good practice examples of consumer group involvement in policy-making. She drew from DECC’s smart metering programme and identified two groups that were set up by Maxine Frerk, then

at DECC, that worked particularly well. First, the Consumer Advisory Group which among other things had “a real sense of purpose”, became a “safe space” for discussion of important issues from “very early in the decision making process”, and helped build invaluable trust between DECC and consumers. In addition it “ring-fenced consumer policy time” for decision makers. And, second, the DECC Data Privacy and Access Working Group. While at times discussions were very heated – through debate and triangulation the group succeeded in hammering out “where was truth, where was fiction and where there was misunderstanding”. Ultimately it delivered a framework that balanced personal privacy with company access to data – “it wasn’t perfect from a consumer point of view, but it was a compromise that everyone understood”. All parties knew why the policy had developed as it had and that built support and confidence in the process. McLeod commented that “it took courage” for DECC to adopt such an approach “when so many decision makers, at some level are scared of real engagement”.

McLeod went on to offer some suggestions to regulators and customer groups on how to work better together:

- Regulators can pick the low hanging fruit: e.g. they should put contact details on documents and a ‘find a speaker’ facility online; engage early – late engagement smacks of a “tick box” approach; and promote a culture of openness.
- Consumer groups need to recognise their responsibilities too: they should be willing to engage with decision makers. She recalled an incident from her time at Ofgem when the first the regulator heard of a consumer group’s concerns was in the media. “That’s not helpful” she said, adding: “It’s not helpful to throw grenades from the sidelines but not to be willing to engage”.
- All parties need to use data in a timely, effective way: for instance, publish complaints data promptly and share more.
- Government must ensure that resources for consumer representation are adequate for the task in hand.

Issues raised in discussion

Life at the coal face: John Davies of Ofcom’s National Advisory Committee for Wales said every regulator should spend a period of time working with a consumer group/s to see life on the other side. Both speakers agreed and noted there were some programmes of this nature already up and running.

Data: A delegate emphasised the importance of data such as complaints to contact centres as a source of information on customer issues and concerns. McLeod concurred. She said that complaints data, held by organisations that were funded through tax-payers money and levies on bills, should be in the public domain in suitable granularity in a timely way so more groups can make use of it to press for a fair deal for customers.

Further reading:

- Coppack, Jackson, Tallack on behalf of the UKRN (2014) Involving consumers in the development of regulatory policy.
- [Government’s consultation principles: guidance](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

How can the public interest receive appropriate weighting in regulatory decision-making?

About

The Oxford Dictionary defines the public interest as ‘the benefit or advantage of the community as a whole; the public good’. In practice there is no agreed definition of the public interest. As Sustainability First highlight in their New-Pin paper on the issue, different groups of consumers, citizens, environmentalists and investors may all have different views on the definition of public interest and what is the appropriate timescale over which to judge this – short, medium and long-term¹⁸. The expression, ‘public interest’ has become shorthand to describe a somewhat nebulous voice that is seen as distinct from the short-term interests of existing customers, and more closely aligned to the interests of future consumers and citizens. It covers longer-term concerns such as sustainability, security, economic stability, resilience, plurality of views, long-term affordability and democracy.

Debate

There is growing debate about the existence of a potential ‘public interest democratic deficit’ in regulated sectors and how this can best be addressed. In particular there are concerns that:

- In decision-making, there is a lack of an effective voice for future consumers and citizens, resulting in potential detriment.
- Public policy makers give inadequate or inconsistent consideration to longer-term interests and wider societal good.
- Focusing on competition and market forces may not be sufficient or appropriate to deliver solutions in the public interest.

Context

- A handful of regulators have an explicit duty to protect and promote the public interest. This includes Ofcom’s principal duty under Section 3(1) of the Communications Act 2003 ‘to further the interests of citizens in relation to communications matters’; and legal services regulators, whose shared objective, Regulatory Objective 1 is ‘Protecting and Promoting the Public Interest’. This is defined by the Legal Services Board¹⁹.
- Some regulators also have duties to protect the interests of both current and future consumers. This arguably captures some public interest issues. For example, Ofgem’s Corporate Strategy states, ‘Ofgem’s principal objective is to protect the interests of existing and future consumers, taken as a whole to include the reduction of greenhouse gases, and security of supply...’²⁰. Their priorities are also informed by government guidance, which provides a limited insight into how the government sees the public interest in energy i.e. it has reference to social issues, economic growth, fuel poverty and the environment.
- To varying degrees, all three models of consumer representation outlined consider public interest issues, though arguably none as well as they could nor with the breadth of stakeholders that is necessary.
- Citizens Advice, the stand-alone statutory watchdogs, and regulators also all carry out horizon scanning research to consider future consumer issues.

¹⁸ http://www.sustainabilityfirst.org.uk/images/publications/new-pin/New-Pin_Defining_the_long_term_public_interest_AMENDED_version_5_August_2015.pdf

¹⁹ http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

²⁰ http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdfhttps://www.ofgem.gov.uk/sites/default/files/docs/2014/12/corporate_strategy_0.pdf

Below are some of the challenges to understanding the public interest voice:

Challenges
<ul style="list-style-type: none">• There is no clear definition of the public interest. This makes it hard for decision-makers to know which questions to ask, and who to consult and when.• There is a lack of guidance on how competing interests should be managed and a lack of transparency around how trade-offs are made.• Understanding the views of future consumers and citizens is by its very nature difficult. Behavioural insights remind us how hard it is for people to effectively evaluate and predict longer-term issues that they have not experienced.• Popular current consumer issues have a propensity to dominate due to: the short-term adversarial nature of politics which makes it harder to develop longer-term solutions and have an open and frank debate about the complexities of issues, including what we don't know; and arguably the campaigning, advice, and commercial bias of many interest groups.• There is insufficient research and data available on potential public interest and future consumer issues. There are challenges in establishing and predicting future trends. Further work is needed to understand the most effective research approaches to uncover the long-term public interest.• There is a lack of diversity of public interest representation in current consumer voice arrangements. This includes a lack of representation from community interests, younger people, regions, devolved nations, public interest groups e.g. environmental and poverty organisations and European citizen interests.

New Energy and Water Public Interest Network ('New Pin')

Much of the debate on the public interest is being led by Sustainability First. In July 2015 they launched the New Energy and Water Public Interest Network, 'New Pin,' to bring together public interest advocates, companies, regulators, and government departments with an interest in energy and water to:

- develop clearer alignment between different stakeholders as to what the long-term public interest looks like in these sectors;
- increase understanding of any differences in views between stakeholders;
- develop capacity and expertise amongst public interest advocates to ensure a more level playing field in long-term company and regulatory decisions; and,
- improve understanding amongst company and regulatory boards of the value of public engagement in these sectors and what successful engagement looks like.

New-Pin in many ways acts as a form of 'deliberative engagement,' bringing network members together to discuss issues such as long-term affordability, trust and confidence and long-term resilience in energy and water.

New-Pin has recently published two papers specifically on engagement in the public interest: a discussion paper on 'Consumer, citizen and stakeholder engagement and capacity building in the energy and water sectors' and a 'Research approaches overview' paper for public interest groups involved in direct research with consumers and other stakeholders.

The discussion paper asked 'Is the long-term public interest being sufficiently represented in energy and water?' It concluded:

1. There is no single best approach to engaging consumer and citizen representatives in long-term decision-making.
2. Greater clarity is needed about who owns the decision to engage and what the purpose of the exercise is – i.e. what are the possible economic, legitimacy and cultural objectives for engagement in that given situation?
3. Company-led engagement can bring many benefits. However, given the significant social and environmental externalities in energy and water - and the associated distributional and systemic impacts - a wider perspective for engagement, including policy and regulatory led engagement, may be needed for system-wide and long-term issues.
4. There are some important gaps in how the public can engage on long-term issues. Engagement needs to cover what matters to stakeholders and ‘big-ticket’ issues: returns / cost of capital and strategic infrastructure investment.
5. A coherent view of engagement is needed that looks across the disaggregated value chain in energy; and at the wider environmental context in water.
6. To take account of the needs of ‘future users’ for water and energy, it will help to look at how behaviours and interests are evolving, particularly around local, community and regional interests – plus how digital communications are leading to changes in our expectations in engaging as citizens.
7. Consensus at all times is not achievable: there can be differing interests both within and between generations. Engaging consumer and citizen representatives on the ethical values applied in arriving at judgements about what is ‘fair’ – both between and within generations - and articulating these will be helpful on contentious issues.
8. Policy makers and regulators need to set out their vision and expectation for stakeholder engagement on long-term issues. Engagement will rarely negate the need for regulation. But, it can inform regulation.
9. Public interest advocates need resources. Without dedicated funding, and checks and balances in governance arrangements around this, engagement on long-run issues could be set up to fail or unduly influenced by vested interests.

Solutions

New-Pin has produced two new tools to help all actors work out the best approach to engagement on long-term issues for them: ‘Principles for Engagement on Long-term Issues’ and a ‘Decision-Making Framework.’ Other solutions mooted to improve the public interest voice include but are not limited to:

- a checklist and ‘how to’ guide for public interest groups, and decision makers.
- publishing good practice.
- use of more deliberative and empowered types of engagement e.g. citizen juries, negotiated settlements and online survey groups.
- greater use of independent forums e.g. Scotland’s Futures Forum²¹ that was created by the Scottish Parliament to look beyond immediate time horizons at future challenges and opportunities (and was recommended for replication in Westminster).
- a dedicated public interest ‘champion’ e.g. the Future Generations Commissioner for Wales, who was appointed in February 2016²². Also, Green Alliance’s proposal to establish a new body ‘Citizen Voice’²³.

²¹ <http://www.scotlandfutureforum.org/>

²² <http://thewaleswewant.co.uk/future-generations-commissioner>

²³ http://www.green-alliance.org.uk/page_1746.php

Conference report

The speakers in this session were:

- **Sharon Darcy**, New Energy & Water Public Interest Network
- **Simon Roberts**, Chief Executive, Centre for Sustainable Energy



Above: Sharon Darcy

Presentations – key points

Sharon Darcy described the activities of the New Energy and Water Public Interest Network (the New-Pin') – a network set up by think tank Sustainability First, which brings public interest groups together with a host of other stakeholders including investors, citizens, companies and regulators. The objective is to explore the public interest, build greater capacity in public interest groups to explore “tricky” issues, and ensure the public interest is sufficiently represented at regulatory and corporate board tables.

New-Pin practices deliberative engagement. It takes a topic, drafts a discussion paper, holds a workshop and engages with its participants in other ways, then publishes the revised paper. Darcy said “You’ve got to be really clear what your purpose is in engaging.” So far the group has tackled long-term affordability, trust and confidence, resilience, and engagement and will be working next on scrutiny of competition policy through a public interest lens.

Darcy sketched out a definition of the public interest, arguing it straddles consumer interests such as value for money, quality and safety; citizen interests such as to care for society and the environment; and wider enabling interests (such as the rule of law). In decision-making, the public interest should underpin policymakers’ strategic frameworks, regulators’ strategic objectives, companies’ social licences to operate, and consumers’ rights and responsibilities. It is about broadening out the focus of decision making from simple economics, such as willingness to pay, to include legitimacy and culture. Regulators in particular can play an important role in ensuring the long-term public interest receives due consideration, Darcy reported. They have the power to focus companies on delivering public interest objectives and are in a good position to give a difficult message to policymakers if need be – that the policy framework may need revising. They could point out, Darcy said, that “I can’t fulfil my bit of the bargain”.

Simon Roberts provided an example of a regulator in action. He described a situation in energy where policy makers had become detached from representation of the public interest and essentially “left it to the regulator”. He was involved with the customer challenge group Ofgem set up in the model of a “critical friend” to challenge it with a sophisticated perception of the consumer interest. He reported this led to better outcomes for, among others, vulnerable customers and meant the consumer interest, not competition policy, drove decision-making. The customer challenge group recommended its work be extended beyond a price control function. Roberts observed that the Ofgem board really should perform the function the challenge group had performed and hence that such a group should not be needed – “but it is”.

Issues raised in discussion

For the discussion, see the section below on different research techniques as both panel sessions took questions together.

Further reading:

- Sustainability First (2015). New-Pin: [Towards a definition of the long-term public interest](#). A New-Pin Background Working Paper and the papers referenced above.
- Darcy, Darlington, et al (2016). [Customer engagement in regulation](#) . LSE’s Centre for Analysis of Risk and Regulation. Discussion Paper No:82.



Above: Claire Milne, independent consultant

What is the role of different research techniques in regulatory decision -making?

Willingness to PAY (WTP)

In competitive markets WTP is used to inform commercial strategies for new products and services. In regulated sectors where customers do not have a choice of provider it is particularly valuable to ensure customers' views are reflected in investment decisions and company priorities. This includes ascertaining if an outcome has a higher value to customers than the cost of providing it, such as how much are people willing to pay to access a better looking landscape, cleaner water or safer transport system? The information is translated into a monetary value.

WTP research, especially stated preference techniques (see below) is widely used. It assists regulators in setting price control service delivery rewards, incentives, and penalties in energy, water, and transport.

The debate

There have been consistent issues raised about the robustness and comparability of different WTP approaches, and the relative weight it should be given when assessing customer priorities and requirements. In water, for example, Ofwat suggested that the WTP results between regions were too variable to be valid and that measures needed to be triangulated and supported with other evidence²⁴. Similarly there have been calls for greater transparency about how, in practice, results influence company business plans.

Attempts have been made to address concerns through changes in methodology, and the development of best practice and common valuation frameworks. These seek to facilitate a more consistent and rigorous approach.

The main methods – strengths and weaknesses

There are a wide number of research approaches and analytical techniques for measuring WTP. A combination of these (alongside other research approaches) is recommended depending on the question under consideration. At a high level, the main approaches used are: revealed preference, stated preference and a newer method, the life satisfaction approach.

Revealed preference techniques

This approach involves inferring the price people place on a product or outcome by examining their behaviour in a similar or related market. The principal benefit of this method is that it is closer to real life experience of how people behave rather than how they say they behave. However there are limitations.

²⁴ http://www.ofwat.gov.uk/wp-content/uploads/2015/10/pap_tec201507engagement.pdf

Potential limitations of revealed preference techniques

- Cannot estimate the total value of a non-market good, and typically only allows for an estimation of the value. For example, a study of the impact of sewer flooding risk on house prices does not reveal true benefits value, if customers are not aware of the risk.
- Cannot place a value on a service customers do not use (non-use value), and it does not reflect if people may be willing to pay for services that do not benefit them but help others (altruistic values).
- Relevant data is often not readily available.

Stated preference techniques

This approach uses questionnaires that describe hypothetical choices within a hypothetical situation in order to elicit WTP or accept a particular outcome. There are two main approaches:

- **Contingent valuation** assesses WTP via direct questions: *What is the maximum amount you would be prepared to pay every year to receive good x?* (the open ended format) or *Which of the amounts listed below describes your maximum willingness to pay every year to receive good x?* (the payment card format)
- **Choice Modelling** elicits WTP by presenting respondents with a series of alternatives and then asking which is most preferred.

Stated preference is useful when no market data is available. It can: identify non-use and altruistic values; explore customers views on trade-offs in costs and benefits; assess their willingness to pay for outcomes that have no direct benefit to themselves; and provide insight into customers relative priorities. However there are a wide variety of challenges. These include but are not limited to:

Potential limitations of stated preference techniques

- Survey results are sensitive to the framing of the questions and other information available to respondents. For example, if the starting point in a survey for a cost option is high, this tends to lead to higher potential acceptance of costs overall. Comparative company performance can also influence customer expectations.
- Directly asking for WTP on complex issues that require trade-offs or unfamiliar goods is cognitively challenging. Customers can find it hard to assess the value of products they have not experienced or to handle relative probabilities of events occurring e.g. with resilience issues/black outs.
- Customers may not give reliable results. There is a wide range of research that highlights customer responses are often intentionally and unintentionally biased. e.g. people have a tendency to overestimate the amount they are willing to pay; will discount future benefits; underestimate their ability to adapt to future change; and are insensitive to the scale of improvements.
- Can limit the opportunity to develop alternative solutions or ascertain radical cost options.
- Fails to effectively capture the diversity of views and impacts on different customer groups, as involves averaging. E.g. how much people are willing to pay depends to a large extent on their income and circumstances.

Life satisfaction approach

Less widely used, the life satisfaction approach looks at how people think and feel about their lives as a whole. Behavioural studies suggest that people's preferences (revealed or stated) may not be good indicators of their actual welfare or wellbeing or what in practice they actually/will actually think, feel or do.

Further reading:

- Willingness to Pay Approach for PR19. A Note by Accent and PJM (2016)
- Frontier Economics for UKWIR (2016), Setting performance commitments and output incentives to deliver best value for money.
- Fujiwara and Campbell. HM Treasury / DWP (2011). [Valuation Techniques for Social Cost-Benefit Analysis: Stated Preference, Revealed Preference and Subjective Well-Being Approaches](#). A discussion of the current issues.
- Competition Commission (2010): Review of Stated Preference and Willingness to Pay. Introductory Note.
- Towards Water 2020 – [Policy Issues: Consumer Engagement and outcomes](#) (2015).



Above: Clare Evans Chair Dee Valley Water Customer Challenge Group

Randomised Controlled Trials

Randomised Controlled Trials (RCTs) are typically an experiment where people are randomly allocated to: either one or more group that experiences an intervention; or another that receives no intervention or standard practice. The aim is to measure and compare the intervention's ability to deliver a particular outcome.

RCTs are not yet widely used in regulated markets but are growing in popularity. The Behavioural Insights Team are strong advocates of RCTs to 'test, learn, and adapt' different policy interventions. The FCA has recently used this approach to assess the impact of a potential remedy to encourage consumers who take out bank accounts with high introductory rates to switch when the rate declines. In its remedies for the energy market, the CMA also recommended that Ofgem should establish an ongoing programme to identify, test (through randomised controlled trials, where appropriate) measures to promote engagement²⁵.

Potential strengths of RCTs	Potential challenges of RCTs
<ul style="list-style-type: none"> ✓ More closely reflects people's actual behaviour in real life situations compared to techniques that rely solely on what people say they will do. ✓ Can save money by providing insight into the effectiveness of a potential policy intervention on a smaller scale, before it is rolled out. ✓ Can be used to assess the cost-effectiveness of existing and potential policies. ✓ Enables the refining of policy interventions via trial and error. ✓ RCTs are popular with the public. Media reporting is largely favourable with RCTs seen as independent of expert knowledge that is often regarded as biased or suspect. ✓ Randomisation reduces self-selection bias. ✓ It is possible to compare the effectiveness of different interventions, while minimising other known and unknown factors that may influence the possible outcome under investigation. 	<ul style="list-style-type: none"> • Findings are not always generalizable e.g. small trials may be misleading. The same programme may have different effects dependent on the context and target populations. • Randomisation can undermine precision. e.g. if a disproportionate number of people who are elderly fall into a trial group which is testing a social media intervention, that might skew the results. It is important to mitigate this. • RCTs are not appropriate for all situations. e.g. they cannot demonstrate how systems of any complexity operate and it is hard to test future issues such as questions around investment and resilience. • It is important to be aware that interventions may influence behaviour in other ways, with unintended negative consequences. e.g. sending elderly people reminders about saving energy, could mean they reduce their consumption, but it could also result in them under-heating their homes. A good RCT must demonstrate an increase in the effectiveness of the focal behaviour, with no reduction in the frequency of other important behaviours. • Behaviours need to be tracked over time

²⁵ <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

	to make claims about the long-term effectiveness of the intervention. Many RCTs are too short to make such claims.
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Conference report

The speakers in this session were:

- **Rob Sheldon**, Managing Director, Accent [on willingness to pay]
- **Beth Moon**, Ofgem [on randomized controlled trials]



Above: Rob Sheldon

Presentations – key points

The final session considered two research techniques that can be used to establish consumer preferences and interests – the first deeply ensconced in regulated industries already, but maturing; the second just in the foothills.

Rob Sheldon’s company Accent is a world leader on willingness to pay research. Accent can deploy both stated and revealed preference techniques, though over the years the balance has come to weigh far more heavily on the side of stated preference. Sheldon said the water sector was “the leading edge environment” for stated preference techniques. At the last water price review, stated preference willingness to pay research was the bedrock of water company business planning. As we approach the next price review, he said Ofwat had “reignited the debate about where those two approaches [revealed and stated preference] lie...with its term of ‘triangulation’.” This is essentially a demand for companies to supplement and cross check their stated preference work with information revealed by other methodologies.

Sheldon accepted the position, but pointed out that stated preference work is “so fundamental” to many sectors - he listed a string of examples, including transport (all road investments, HS2 planning, every rail franchise bid, airport investments), utilities (network investments, tariff development, incentive regimes) and communications (pricing strategies) - that “we should be putting our efforts into making it better” as well. He provided some lessons on best practice stated preference work. Researchers should try to replicate real world situations where possible and build in behavioural

insight biases. Risk should be designed out and language and concepts kept simple. Sheldon illustrated his point with the comment that “only 10% know what 10% means” and described some of the concepts and language used in research 15 years ago as “frightening”.

Beth Moon provided early insight on a technique Ofgem is in the foothills of using – randomised control trials. She noted trials are not suited to every situation but said that where feasible it is “really important to test things” and to “quantify behaviour in a way that is robust”. She illustrated her point with the fact that teenage girls, who had been given electronic babies to care for in an exercise to educate them about the responsibilities of parenthood, were more likely to become pregnant than those who had not taken part.

Ofgem has unsuccessfully attempted trialling before, but this latest initiative follows the CMA’s package of energy market remedies, one of which was greater use of trialling. Moon said the regulator wanted to get companies to conduct trials as well as running its own. The first area of focus is prompting greater engagement in the energy market – in particular how to engage those who have been on standard variable tariffs for some time. She said it was too early to provide any details but shared some early observations: that suppliers had different levels of capability to engage; that voluntary cooperation was difficult – hence the CMA’s recommendation of a licence condition requiring it; that process was critical, in particular having a clear research question to answer; and that a good strategy was to start simple and build on it. She said in future “trialling has a much broader potential at Ofgem”.

Issues raised in discussion

Duty v flexibility:

A representative of the Office of Rail and Road remarked on the “intense challenge” regulators face in getting consumer input, but questioned how imposition of a licence duty would sit with company flexibility. Moon said Ofgem had no desire to constrain flexibility and would not necessarily deploy the licence condition option, but did want to get trials underway.

Don’t forget the Government:

Water UK’s Rob Wesley reminded all delegates not to forget the role Government should play in protecting the public interest. Strategic Policy Statements, for instance, can provide a good framework for everyone to work within. Even a short list of Government priorities would be useful. Roberts reiterated his observation about the political class failing to engage, and commented “Politicians have outsourced difficult decisions to the regulator”.

Driving culture change:

CCWater’s Deryck Hall questioned how far regulators should go in trying to drive culture change in companies. Roberts advised regulators to consider their own organisational psychology and strategy in driving behavioural change, for instance in galvanising those at the bottom of league tables who are not responding to incentives. Critical factors to consider, he said, include at what point to intervene and how – is it better to get CEOs in a room to discuss an issue, or to put out a critical press release three months later?

Further reading:

- Haynes, Service et al. Test, Learn, Adapt : Developing public policy with randomised controlled trials.
- Deaton, Cartwright. [Understanding and Misunderstanding Randomised Controlled Trials](#). (2016) Working paper 22595. National Bureau of Economic Research.
- [Randomised controlled trials: powerful but only when used right](#). Article in Huffington Post (2015).
- Wilson. [Behavioural Insights on climate change?](#) (2015) Tyndall Centre

Conclusion

All models and methods pursue the same goal: to improve the lot of consumers of essential regulated services. As such, a number of speakers remarked on the fact that there is no single solution; no one model or methodology that should stand without the rest.

In terms of the consumer voice approaches, at a high level, both the panel within the regulator and the stand-alone consumer watchdog have their strengths and weaknesses, depending on the type of market, the sector, and the wider consumer landscape. In all cases, where potential limitations are identified, care must be taken to mitigate concerns.

One delegate questioned whether consumer interests, would be better served by representatives coordinating their positions to speak with a single, clear voice. But by and large this was not considered beneficial. Citizens Advice's Stew Horne said a multitude of voices was a valuable thing and that the challenge fell on government and regulators to engage with the complexity.

There was general agreement on the need for the consumer voice to be represented in a dedicated way, despite the fact that regulators typically have duties to protect customer interests anyway. Not only did particular groups of customers – such as those in vulnerable situations and those least likely to engage – need particular consideration, but there has also been a growing tendency to assume that, given the right information and opportunity, consumers will drive the market to deliver. Financial Services Consumer Panel chair Sue Lewis pointed out starkly that “being a consumer is not a job” and hence that pressure for supply side remedies must be kept up.

A consumer voice body within the regulated company can act as a good complement to existing approaches. It does not require legislation or public funding, highlighting a real opportunity for developments of this kind. The conference agreed that the “presumption” that companies in fact represent customers because they have to attract and serve them was very much “rebuttable”. ESAN's Claire Milne pointed out that, unlike consumer representatives who have nothing but customer interests at their heart, even well-meaning companies are compromised by their pursuit of profits.

Given that each consumer representation model has its strengths and limitations, there is seemingly a case for encouraging elements of all three approaches where resources permit. Arguably this situation has existed in the water sector, which has relatively high customer satisfaction and trust rates compared to other regulated sectors, with a version of the consumer voice within the regulator (Ofwat's Expert Advisory Group), a stand-alone consumer voice outside the regulator (CCWater) and consumer voices within the regulated companies (Customer Challenge Groups). Where there are two or more models of representation, it is important for there to be a clear understanding of the different roles of the different bodies and collaborative working between them.

Similarly with the use of different research methodologies, there is ‘no one sized fits all’ approach. Transport Focus' Jeff Halliwell supported the concept of multiplicity, observing though “the more evidence-based you are, the more authoritative you can be”.

While behavioural insights and related randomised controlled trials are considered a ‘gold standard’ technique in terms of providing robust quantitative data that allows

measurement of actual consumer behaviour and to evaluate the impact of interventions, their use is not always practical, ethical or appropriate. BIs are important, but only part of the picture, particularly for complex issues such as tackling climate change or resilience. Traditional system-wide approaches to policy solutions are still needed.

Decision makers are increasingly recognising the importance of capturing the diversity of consumer voices, including those who are in vulnerable circumstances. While the UKRN has identified four principles of effective engagement many regulators still have a way to go to consistently meet this good practice. All parties (regulators, governments, and industry among them) need to be more flexible in how they engage with consumer bodies, recognising their relatively limited resources, and at times limited sectoral knowledge. This involves taking steps to actively build capacity among the consumer sector, by using a wide range of techniques, including embracing digital opportunities, to support engagement and strengthen the consumer voice in decision-making.

The Essential Services Access Network (ESAN) is strongly in favour of wider knowledge sharing and experimental use of different consumer representation models and different consumer research methodologies. We are of the view that this would be good for consumers, regulators and companies. We hope that this paper will assist in promoting such information exchange and experimentation. We stand ready to work with all relevant stakeholders to advance this progressive agenda.

"Superb #esanevent fantastic speakers, great content, excellently chaired."

Tweet from a regulator