

**Consumer Engagement in the RIIO Price Control Process**  
**Review**

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## Context

This report was prepared for Ofgem by Maxine Frerk when Partner Special Projects at Ofgem. As Partner Consumer Affairs, Maxine established the Consumer First programme to improve Ofgem's use of consumer insight, including establishing the original Consumer Challenge Group in 2008 to act as a critical friend to Ofgem in price controls. Most recently as Senior Partner Distribution she led the final stages of the RIIO ED1 price control. This report was prepared to capture learning gained through that process to inform future thinking. The report does not represent Ofgem or GEMA views.

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For queries about Ofgem's approach to future price controls please contact Ofgem.

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## Executive Summary

The question of how best to get consumer input into complex regulatory decisions such as price controls is an issue that regulators across sectors are grappling with. This review looks at Ofgem's experience in RIIO and the lessons to be drawn.

The approach to consumer engagement was one of the strands of the major review of Ofgem's approach to price controls "RPI-X@20" initiated in 2008. As a part of that, Ofgem looked carefully at other international models such as the negotiated settlement approach advocated by Professor Stephen Littlechild. However, the conclusion at the time was that an enhanced approach to engagement – both by Ofgem and, more fundamentally, by the companies was a better approach. As a part of this Ofgem did not prescribe how the companies should do their engagement but recognised the value in allowing flexibility depending on the nature of the issues. However, effective engagement was one of the criteria that would be assessed in deciding whether to "fast track" a company. There was also an expectation that this engagement should not just be a one-off exercise around the setting of the price control but that companies would be expected to continue that engagement and an incentive was introduced to encourage them to do so.

In terms of its own engagement Ofgem looked to build on the changes it had put in place for the previous distribution price control DPCR5 as part of its wider Consumer First programme. This involved using the Consumer First Panel (a standing panel of c100 customers), a Consumer Challenge Group (a small group of expert consumer advocates who met regularly with Ofgem and the Authority throughout the process and served as a critical friend) and a Price Control Review Forum (where wider stakeholder and the industry would meet to debate key issues). This built on a programme of consumer research (eg on willingness to pay) that had been carried out in past price controls.

The consensus across stakeholders is that the model adopted for RIIO has been very successful in driving a step change in engagement by the companies – in particular by the time it came to the third and final review which covered electricity distribution, RIIO ED1. For RIIO ED1 the companies used a range of techniques – specialist panels, open events, surveys etc. Inevitably some were more successful than others but the ability to evolve and learn what works and what doesn't in a particular context is a positive feature of the regime.

The approach taken in other sectors has tended to be more formal and structured. In the water sector Ofwat required all the companies to set up consumer panels ("consumer challenge groups") to help them in developing their business plans but all decisions remained with Ofwat. In Scotland WICS went further down the path to negotiated settlement with a Consumer Panel (appointed jointly by WICS, the consumer body and the state owned Scottish Water) being given the mandate to try to reach agreement with Scottish Water on its plan – but supported by a number of guidance papers provided by WICS. In the airports sector the CAA has pursued what it calls "constructive engagement" with airports being invited to try to reach agreement with their customers, the airlines – with the CAA being ready to accept that settlement subject to being satisfied it meets the needs of users (passengers). For the next price control the CAA are looking for Heathrow to set up a Consumer Challenge Board to reinforce the consumer perspective.

Although there is a lot that can be learned from looking at the experience of these different sectors it is worth also being alive to some of the key differences between sectors that may justify a difference in approach. In particular, the integrated nature of the water sector means that consumers are engaging directly with the water companies (eg in terms of bill payment) in a way that they do not with the energy networks. The fact that airlines are large well-resourced players means that asking them to negotiate is more realistic than it is for a consumer body. That said there is still scope to learn from these examples. There have been a number of reviews of the experience of these other regimes and some of their conclusions, which are of direct relevance to Ofgem, are that:

- It is important to set expectations up front about the role the consumer panel should play eg there continues to be a real question over how far panels can engage on issues around cost of capital or efficiency which are the natural expertise of the regulator.
- The appointment, funding and reporting of the panels need careful thought if they are to have legitimacy. There is a concern that the panels can be “captured” by the companies – or at least may appear that way. In particular, more could be done to demonstrate how the panels have impacted the business plans (which may help then justify why the panels support the final plans).
- Thought needs to be given to whether this is simply about consumers or about wider stakeholders. In particular, it is not clear how far “future consumer” interests would be picked up by consumer groups and whether the contracting party (airline or retailer in a competitive market) is really an effective representative of the consumer interest – or simply serving their own commercial ends.

Having reviewed the experience of these other sectors along with how the RIIO process worked my conclusion is that there does not seem to be a case for Ofgem to take a very different approach for RIIO 2. However, there are clearly ways in which incremental improvements could be made and one would expect to see the bar being raised in terms of what enhanced engagement looks like for RIIO 2, learning from the first round. Particular reflections are set out below.

#### *Enhanced engagement by the companies*

**Approach to company engagement:** In terms of the enhanced engagement by the companies it is important that companies continue to build and learn from best practice eg getting early input in developing their plans not just “consulting” on them. In the RIIO process itself the transmission companies found it harder to make this effective as they are more distant from end consumers. However, the ongoing feedback through the stakeholder engagement incentive should help ensure they are “match ready” when it comes to RIIO2. The ongoing reporting of performance against agreed business plans is also critical in showing consumer groups that commitments made to them will be adhered to even if there is no direct regulatory lever.

**Setting expectations:** As with other sectors it is important that there is clarity around what can be expected from engagement by the companies. Experience of other sectors is that most value is gained from engaging on customer service standards and what customers are willing to pay for. This may well vary by region depending on the issues. In RIIO1 Ofgem was cautious about allowing different standards to be set between companies (and it does complicate cost benchmarking). As part of its strategy work for RIIO2 Ofgem could think about whether more flexibility in this space

would give local consumers more chance to shape the outcomes they want. Ofgem would then need to signal how far it was willing to respect the views of customers on particular issues and where it is primarily interested in feedback.

**Opportunities to go further:** While transmission is less obviously consumer-focussed there may be more scope for elements of a negotiated settlement with suppliers and generators as the customers of the network. This was attempted as a way of dealing with a reopener on gas compressors where understanding future customer needs was key to the decision but National Grid did not provide sufficient information on the costs and benefits of different options for Ofgem to be able to rely on the conclusions from the stakeholder engagement in its decision. However, if this could be addressed there may be scope in future for Ofgem to rely more on the outcomes of such negotiations.

**Ofgem's engagement with companies' stakeholders:** While there were good reasons for Ofgem not participating in any of the companies' events in terms of both resources and signalling the culture change it wanted, this did leave the companies having to explain Ofgem's position to stakeholders. Thought should be given as to how best to direct comments to these groups – and whether Ofgem itself would want to hear more directly from any consumer panels what they think of the company plans, in line with the model in other sectors.

#### *Enhanced engagement by Ofgem*

**Consumer Challenge Group:** Ofgem's engagement with the Consumer Challenge Group is very valuable but highly dependent on getting the right people – though also on recruitment to that group being transparent. As with other sectors, setting expectations is important to avoid frustration. Given this is a central group with specific expertise it would be possible for it to contribute on more technical issues such as cost of capital and efficiency trends, as well as the interest of future consumers in some of the technology changes shaping the industry. However, it is important that, as was generally the case in RII01, senior managers welcome and are ready to engage with the CCG on these issues. Their advice is only helpful if it is genuinely sought.

**The Consumer First panel:** This provides a useful check on what the main issues are from the perspective of domestic customers. Again, in line with findings from the water sector, end consumers struggle to understand and engage with the more technical issues and with the industry structure. Feedback from the panel was that they actually expected the regulator to do this on their behalf. However, subject to the panel continuing, they could be used early on to provide a sounding and initial input to the strategic work of the policy team in Ofgem.

**The Price Control Review Forum** was useful as a way to get direct dialogue between the parties and to help build some mutual understanding, with Ofgem engaged and able to hear both sides on issues. However, with only occasional meetings and a broad agenda there was limited opportunity to explore issues in any depth. While seen as a useful part of the process there may be a case for having some more specialist sessions (eg on DG, social obligations) to allow more in depth discussion and ensure that specialist groups can focus on the areas of most interest to them.

**Communications:** It had been noted in the RPI-X@20 work that there would be value in making consultations easier to read and more accessible. While steps were taken to try to make the

overarching documents more accessible this is always a challenge on time critical documents and it may be that having some dedicated resource to think about external communications would help.

**Maintaining focus on stakeholders:** It has been observed by a number of people that there was less emphasis on company engagement with stakeholders later in the process and that Ofgem seemed to simply revert to traditional RPI-X regulation. Ofgem might think about how the process could continue to leave consumers / stakeholders with a key role later in the process, using Ofgem's guidance to help reshape the plans.

Looking internationally there is no obvious alternative model that looks better than what Ofgem has been doing though again there are some ideas that might provide incremental improvements. For example, a member of the original Ofgem CCG was working for a period in Australia and put in place a similar structure there but with some funding to allow the CCG to commission work on specific issues.

In conclusion, the RIIO model of consumer engagement should be seen as a success and in terms of driving real culture change in the industry. Unsurprisingly, it was more effective in some areas than others and there is still room to learn and improve but the fundamental approach identified in the RIIO Handbook has stood up to the test and provides a sound foundation for RIIO2. While consumers today have limited interest in or understanding of the role of networks, looking to the future there may be more direct impact through smart metering and smart grids. Maintaining a strong focus on consumer engagement in RIIO2 is therefore vital.

## Introduction

An important part of Ofgem's work is the setting of price controls for the monopoly network businesses.

Back in 2008 Ofgem initiated its major review RPI-X@20 to look, after 20 years, at how the approach to price controls should evolve to respond to the challenges facing the energy sector as it adjusts to move to a low carbon energy system. Out of that review came the RIIO framework (Revenue = Incentives + Innovation + Outputs). One of the aims of RIIO was to get the companies to focus more on their consumers and the outcomes they value rather than just on the regulator. The aim was also to get companies looking longer term and being more innovative.

With the first round of RIIO reviews (covering transmission, gas distribution and electricity distribution) now complete it seems timely to review how effective the changes made around consumer engagement were and what lessons there might be for RIIO2.

There are other areas in which Ofgem will be looking to learn from experience on RIIO and the issues around consumer engagement have a wider interest across sectors as all regulators have been grappling with the question of how best to engage consumers in price controls (as well as with issues of consumer engagement more widely). As a part of this the water industry commissioned a cross sectoral study by Harry Bush and John Earwaker<sup>1</sup>. This touched on the energy experience but noted that a full review had not been completed following RIIO. This report aims to fill that gap and draws heavily on the Bush / Earwaker report for lessons from other sectors.

This report was developed based on a review of published documents, conversations with colleagues in Ofgem who were around at the time, with some members of Ofgem's CCG and others across industry. However, there would be value in exposing the findings of this report to wider consultation ahead of any decisions being taken on the next steps for RIIO2.

In terms of structure, the report:

- Starts with a recap on the conclusions from RPI-X@20 and the approach outlined in the RIIO handbook;
- Reviews what happened in practice both in terms of the companies' engagement but also Ofgem's own arrangements, highlighting strengths and weaknesses;
- Looks at ongoing consumer engagement by the companies;
- Reviews the lessons from other sectors and, briefly, international experience; and
- Draws conclusions on how Ofgem's approach could usefully evolve for RIIO2.

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<sup>1</sup> The Future Role of Customer and Stakeholder Engagement in the Water Industry - UK Water Industry Research Report



## Background - The RIIO Approach to Consumer Engagement

### *RPI-X@20 – key considerations around consumer engagement*

RPI-X@20 was Ofgem’s detailed review of energy network regulation. It looked at how best to regulate energy network companies to enable them to meet the challenges and opportunities of delivering a sustainable, low carbon energy sector while continuing to facilitate competition in energy supply. The aim was to get network companies to focus on the needs of existing and future companies. To do this Ofgem were of the view that the companies needed to engage more effectively with their consumers. Ofgem also recognised that it could improve its own engagement with stakeholders. As a part of that process Ofgem published a number of consultations and technical papers and held various workshops.

One strand of thinking during this programme was around consumer engagement. Significant effort was put into exploring the range of options and deciding what would be most effective given the specific challenges facing the energy sector. The key papers produced at this time are summarised below.

#### *Littlechild / Cornwall report on potential scope for user participation in the GB energy regulatory framework (March 2009)*

This paper was commissioned by Ofgem to feed into its thinking on RPI-X@20 and focussed in particular on the next Transmission Price Control Review. It looked in particular at four potentially relevant approaches:

- The Public Contest Method in Argentina whereby transmission users propose and vote on possible transmission expansions which are then put out to tender;
- The constructive engagement approach used by the Civil Aviation Authority (CAA), the UK airports regulator, where the regulator looks to airlines and airports to discuss and seek to agree on specified components of the price control “building block” calculation which can then be taken into account by the regulator;
- Negotiated settlements in parts of the US and Canada where energy utilities and interested parties such as network users and customer representatives negotiate and seek to agree on the whole or part of a forthcoming price control which is subsequently adopted by the regulator;
- Negotiated services in Australia where the regulator specifies criteria for identifying services to be negotiated.

The paper acknowledged the steps that Ofgem had already taken into increase user involvement but argued that there was scope to do more drawing on elements of the case studies and in particular the “constructive engagement” model.

It set out some of the steps that Ofgem would need to take to do this including providing clarity on its intended role and the roles of participants, starting the process sufficiently early to enable greater industry and consumer participation, and indicating those areas where it would particularly welcome constructive engagement.

This paper was developed by a cross sector working group and examined the issues faced in engaging consumers and their representatives in the price control process. The issues it explored were:

**The historical approach to consumer involvement in price controls:** This was primarily through conventional consultation. Although there is no bar on individual consumers responding, in practice response is generally limited to suppliers, trade bodies and consumer representatives. However, the approach had evolved and as part of Ofgem's wider Consumer First programme Ofgem had established the Consumer First Panel and Consumer Challenge Group. The former consisted of 100 members of the public who met three times a year to discuss consumer energy issues and the latter of six consumer energy experts who were invited to challenge the Authority on policy issues in the DPCR5 price control.

The factors that impact on the willingness / propensity of consumers to actively engage in price controls were set out and included the complexities of markets structure, lack of transparency around network charges, level of understanding and knowledge of stakeholders, and the complexity of the documentation.

**Diversity of views:** There are a wide range of network users and parties with an acknowledged interest in the outcomes of price controls. It was noted that this is a very diverse group which makes it difficult to define what consumers actually want. Many consumer or special interest groups have a narrow focus – whether it is an RDA seeking local investment or a fuel poverty group concerned about that particular subset of customers. There is a need for someone to balance these different perspectives and weigh these short-term interests against the longer-term consumer interest in having cost effective and reliable distribution and transmission networks. Reliance on consumer representatives does not overcome this problem as they still have to decide how to balance the conflicting preferences of those they represent.

A legitimate question was raised as to whether today's consumers are best placed to make long term investment decisions (linked to the low carbon transition) on behalf of future consumers.

There was an active debate as to whether suppliers have a remit to represent the consumer view in this process given the potential misalignment between short-term commercial objectives of suppliers and the longer-term investment needs of networks. Suppliers noted that network costs are an increasingly important area of costs and in particular the level of uncertainty around those charges meant suppliers had a legitimate interest in price controls.

**Horses for courses:** It was noted that transmission companies have very little interaction with domestic and SME customers and that arguably their customers could be seen as the shippers, generators, larger connected customers and distribution network operators. Distribution companies tend to have more impact on domestic and SME customers both through their activities and relative costs (typically 15-20% of the bill).

The paper then explored generic models of consumer engagement. It set out characteristics of a better process as being:

- inclusivity,
- minimising complexity,
- improving transparency,
- clarity of role of the regulator.

It then set out different solutions against level of engagement and the formal right of appeal / influence.

The low engagement / low rights model is arguably what has been followed historically and is effectively “consult and explain”. The higher engagement / higher formal rights models include those covered in the Littlechild / Cornwall paper.

The paper noted that the “public contest” model used in Argentina is limited to voting on specific projects. The negotiated settlement approach (where decisions are binding on the parties but not on the regulator) again tend to be focussed on specific issues while the “constructive engagement” model (as used by CAA) has a broader scope. However, the working group paper concluded that these tend to require a small group of customers that have relatively well aligned objectives.

*Ofgem “Current Thinking” on Consumer Engagement in the Regulatory Process (Oct 2009)*

This paper reiterated why consumer engagement was seen as increasingly important given the challenges of a move to a low carbon energy system and the expected impact on network charges. It sets out the skills needed for effective engagement including an understanding of consumer needs combined with an understanding of regulation, adequate resources and a willingness to engage. It then explores the role that individual consumers, consumer representatives and network users can most usefully play in the process.

The paper outlined several options that could be developed to encourage greater stakeholder engagement in the regulatory process. It characterised these as:

- enhanced engagement where Ofgem makes decisions but these are informed by engagement with consumer representatives, network users and network companies;
- embedded decisions – a model which provides consumer representatives with a direct role in decision making alongside Ofgem;
- collaborative decisions – a model that confers decision making powers on part or all of the price control to consumer representatives.

Ofgem’s early conclusion was that it did not think it would be appropriate to adopt an approach that gave the network companies and their stakeholders responsibility to negotiate directly on elements of the price control framework. Rather it suggested that it would be more appropriate to provide affected parties with opportunities to influence the outcome of the price control through an enhanced engagement model.

As a part of this, Ofgem took a wide view of the stakeholders that should have an opportunity to engage covering not just end consumers but other network users (such as suppliers and generators), Government, other regulators (HSE and EU), special interest groups (eg environment, network employees and investors). While Ofgem’s duties are to consumers, other stakeholders can provide valuable insights that inform thinking about future consumers or aspects that are defined in statute

as being part of the consumer interest (eg reduction of greenhouse gases) but which consumers themselves may not be so aware of.

In reaching this initial conclusion Ofgem actually drew on research<sup>2</sup> with its Consumer First Panel (of ordinary consumers) who felt that in general price controls were too complex for consumers to engage on, although there were areas such as customer service and social issues where they could contribute. They saw the role of consumer representatives as important and also felt there was a pivotal role for Ofgem.

#### *Jan 2010 Emerging Thinking – Enhanced Engagement*

This paper advocated a twin track approach of encouraging network companies to engage with consumers on an ongoing basis and complementing this with Ofgem’s own enhanced consumer engagement as part of the price review process.

In terms of Ofgem’s own engagement it proposed creating a Price Control Review Forum (PCRF) allowing affected parties to participate at specific stages in the development of the price control settlement. The Forum would be held at regular intervals with an open invitation for interested parties to attend and take part. Existing elements of the arrangements (consumer research, the Consumer First Panel and the CCG) could feed into the Forum. This paper set out how enhanced engagement might work through the different phases of a price control but emphasising the need for the arrangements to be flexible and to evolve. For example, it noted:

- Holding discussions on areas of interest to stakeholders at an early stage in the process would help ensure that discussions at the PCRF were focused on issues of importance to the parties and in areas conducive to debate;
- It was expected that the most useful areas to discuss would be the design of outputs / incentives rather than specific elements of the business plans;
- Ahead of publication of major consultation documents there would be scope to have dialogue on policy issues under development;
- It would be important to have a record of discussions to aid transparency;
- It would be helpful to have a senior Ofgem chair.

The PCRF was intended to complement existing arrangements for engagement such as the Large Users Group (LUG) and the Consumer First panel for domestic customers and the Consumer Challenge Group that had been established for DPCR5. It was noted that trade bodies could provide a channel for network users to feed in their views.

In addition, it was noted that Ofgem’s traditional consultation processes could be improved by making information more accessible and easier to understand, and potentially by targeting workshops and seminars to particular interest groups. The question was also raised as to whether financial support should be provided to consumer groups recognising the time burden that engagement in the PCRF, and potentially other engagement, could impose.

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<https://www.ofgem.gov.uk/sites/default/files/docs/2009/10/panelsummary3rdworkshop%28external%29.pdf>

Links were made at the time with the proposal that originally came from Ofgem for third party rights of appeal. The assumption was that the existence of such a right of appeal would encourage more effective engagement during the process.

*Handbook for Implementing the RIIO Model (October 2010)*

In its final decision on the RPI-X@20 project Ofgem confirmed that it would follow an enhanced engagement approach as set out above. It saw the primary benefits as being:

- Improved legitimacy of the process;
- Ensuring outcomes are aligned with the needs of consumers;
- Assisting with meeting the emerging challenges especially around the transition to a sustainable energy system.

The RIIO Handbook<sup>3</sup> then set out in more detail the practical steps that would be involved in making this work including:

- Principles for engagement (inclusiveness, transparency, accessibility etc)
- Examples of the stakeholders that Ofgem expected to see involved;
- How the incentives on the companies should drive more engagement (noting that Ofgem would be judging them on both how they engage and the impact);
- The who / what / how of engagement – both for the companies and Ofgem’s own engagement. This made clear that Ofgem would not be prescriptive as to what the companies needed to do and that there would need to be flexibility in the approach depending on the issues;
- Discussion of the issue raised by companies around the interplay between stakeholder views and actions they are mandated to take under their licence (where they would need to flag any issues to Ofgem).

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<sup>3</sup> <https://www.ofgem.gov.uk/ofgem-publications/51871/riiohandbook.pdf>

## Background: lessons from other sectors

While the RPI-X@20 review took account of some of the early thinking around negotiated settlement, drawing on experience from overseas and from other sectors, there has been more experience and reflection since which it is helpful to draw on. In particular, as noted earlier, Bush and Earwaker have done a full review of the latest experience on behalf of the water industry. This looks in depth at the CAA experience of constructive engagement between the airports and airlines, the WICS negotiated settlement with Scottish Water and the Consumer Water and the Ofwat experience with enhanced engagement. The report touches on energy but notes that there has not been a full review of the RIIO experience – a gap which this report aims to fill.

Other reports which look across sectors are:

- LSE have also produced a report with input from participants across the sectors<sup>4</sup>;
- A report for NIE Networks;<sup>5</sup>
- A report by the Australian consumer body<sup>6</sup>.

UKRN are currently working with Which? to share learning across regulators in this space building on earlier work on consumer engagement more broadly.

Annex 1 provides more detail on these other regulatory experiences.

Drawing on the Bush and Earwaker conclusions and the other reviews noted above, the key points that need to be thought about in an energy context are:

- **Rationale** - There can be value in using negotiated settlement as a way to give legitimacy to the final price control (and potentially provide some “cover” for the regulator) – however the primary rationale is that consumers themselves are better placed to make some of the cost-quality trade-offs that need to be made. While in every case, legally the regulator remains responsible for the final decision, the question is one of how far the regulator is willing to commit in advance to be bound by any agreement reached between consumers and the companies.
- **Legitimacy** - In water, specific panels have been created to represent consumers. However, there are real challenges in how to ensure the legitimacy of any consumer representatives that are used as part of the process. In particular, this means that the appointment of panels needs to be transparent and thought needs to be given to the length of term and payment to avoid any suggestions of “capture”.
- **Who can represent the consumer?** In airport regulation, the view has historically been taken that the airlines adequately represent end consumers – but with the CAA retaining the option to intervene if it does not consider that the views are representative of passenger

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<sup>4</sup> <http://www.lse.ac.uk/accounting/CARR/publications/dpAbstracts.aspx>

<sup>5</sup> Customer engagement, methods and examples of best practice – Perceptive Insight for NIE Networks (April 2016)

<sup>6</sup> Negotiated Settlement and Consumer Engagement - UK Experience and lessons for Australia ECA Research report 2 - May 2016

interests. For the next price control, they are introducing a Consumer Challenge Board to ensure the consumer view is properly considered by Heathrow.

- **Consumers v stakeholders?** Questions still remain around the role of other stakeholders (eg the Drinking Water Inspectorate and Environment Agency in water). Another specific group that it is acknowledged is important but where it is unclear how they are represented in any of the sectors is “future consumers”. In energy “future consumers” are a key consideration and the move to a low carbon future makes the range of relevant stakeholders much wider which is one reason for Ofgem taking a different approach.
- **Scope of settlement** - There has been significant debate about what issues it is reasonable to expect consumer representatives to form judgment on. In particular, there seems to be a general recognition that consumer groups are not well placed to decide on either cost of capital issues or relative efficiency. However, the key lesson that most reviews draw is around the importance of being clear up front what the scope of the panel’s remit is, to avoid disappointment or frustration later in the process.
- **Role of regulator in the discussions** – The different models vary as to how far the regulator gets engaged in the discussions between the company and the consumer group. There is some nervousness about having the regulator involved if that risks retaining a focus on the regulator’s views and continued deference to their position. There are also significant resource implications in sectors where there are many companies. However, for WICS in Scotland (where they had the advantage of only a single company process to engage with), they made a real virtue of being involved and providing regular guidance notes to the consumer panel. This provided a way for the regulator to feed in on those issues where they had greater expertise while leaving the overall negotiation more in the control of the company with its customers. Ofwat also held quarterly meetings with the CCG chairs.
- **Avoiding capture (or perception of it)** – One of the challenges identified is how to be confident that the consumer panel is not being captured by the company. There is some sense that the panels can be useful and challenging at the start of the process but that once the plan is developed they appear to turn into advocates on behalf of the companies. This leads to concerns about “capture” but could equally reflect a good process where their voices have been heard early and they are genuinely happy with the end result. The lesson that is drawn is that there is a need for a clearer explanation of how company plans have taken on board consumer input – to demonstrate the value that they have added.

While most of the commentary in the various reviews was around the role of consumer engagement with the companies (as part of a negotiated settlement) Ofwat also claimed at the start of their process that they would be enhancing their own engagement as well, in the way that Ofgem was doing. They set up a consumer advisory panel but there is little on their website and the sense is that this was not as important a part of the process<sup>7</sup> as the company consumer challenge groups which Ofwat have been clear that they will be continuing for PR19.

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<sup>7</sup> See Roger Darlington interview in Utility Week 8/1/15

## RIIO in practice

### Overview

Ofgem has now carried out RIIO price controls in four segments – gas and electricity, transmission and distribution. The transmission and gas distribution controls were carried out in parallel, with electricity distribution taking place two years later, albeit with some of the initial RIIO ideas being used in the previous control DPCR5.

Ofgem adopted a common approach to enhanced engagement across all the controls. The same PCR5 was used to cover issues on all controls and, although the CCG membership was refreshed for RIIO-ED1 a number of the members carried over providing continuity of approach and learning. The paper sets out below reflections on how well this worked based on conversations with a number of those involved.

In terms of company engagement there is evidence of building and learning through the different price controls, plus a recognition that distribution was easier than transmission in terms of bringing in a full range of stakeholders and direct consumer input. Given this, the section below looks in more depth at the ED1 experience.

As part of the RIIO model, Ofgem has set out a standard process that it would expect to follow for each price control starting with a strategy which provides the companies with guidance on what Ofgem expects to see in the business plans. The companies then submit their business plans, informed by stakeholder engagement and where Ofgem concludes that they are well justified it can “fast track” the company, with its business plan accepted as it stands. Other companies need to resubmit their plans in light of Ofgem feedback and these plans are then subject to more scrutiny in those areas where Ofgem had concerns, with Ofgem finally determining the allowed revenues for the non-fast track companies. In the RIIO Handbook it was acknowledged that stakeholder engagement would need to be front end loaded but the section below sets out in a bit more detail the role stakeholders played at different stages of the process.

Another feature of RIIO is that Consumer / Stakeholder engagement should be an ongoing process and there are incentives for companies to do this. A later section provides more detail on how that incentive works and the way it has helped deliver what is seen as a step change in consumer focus by the distribution companies in particular.

### Ofgem enhanced engagement

As noted above, Ofgem looked to build on a number of elements of its existing arrangements for consumer engagement as part of the “enhanced engagement” which it committed to under RIIO.

#### *Consumer First Panel*

As part of a wider cross organisational initiative Ofgem had established its Consumer First Panel comprising around 100 ordinary consumers who were involved through deliberative research in helping shape Ofgem’s policy thinking. The opportunity to work with the panel on an ongoing basis meant that they could be helped to understand for example the role of the networks as a precursor to involving them in some of the policy discussions.



As noted above the Panel were initially consulted as part of the RPI-X@20 process to help in thinking about the most appropriate role for consumers in the process. Off the back of this the panel were used at the start of the RIIO ED1 process<sup>8</sup> to help identify the broad priority areas for Ofgem to consider in designing output incentives.

### *Other sources of consumer input*

In addition to the panels Ofgem has a history of using consumer research to underpin its design of incentives including consumer willingness to pay research.

Citizens Advice (previously Consumer Futures) is the statutory consumer body for energy and could be expected to engage significantly. However, the technical nature of price control discussions means that whether or not they do in fact play a major role is highly dependent on the aptitude and interest of those on the Citizens Advice team. Their focus historically has tended to be on high level messages around “best value” rather than engaging in the detail of the control. However, for ED1 they made a valuable contribution in a number of areas.

Suppliers can play a valuable role in debating some of the more technical details and would see themselves as representing the consumer. However, their incentives are not wholly aligned, and the RIIO ED1 appeal highlighted, for example, that suppliers will tend to focus on short term cost reduction rather than taking future consumer interests equally to heart.

### *Consumer Challenge Group*

This group was established to support the Authority in DPCR5 by acting as a critical friend and “conscience”. Given the extensive interactions with the regulated companies and senior management it helps to provide balance if there is a strong voice also pushing the consumer perspective. The panel was recruited to bring specific expertise combining a consumer perspective with an understanding of the regulatory regime. The panel continued to play this role through all the RIIO price controls with some refreshing of the membership, aimed at striking a balance between maintaining experience and bringing in new ideas and avoiding “capture”).

The Group had a number of meetings with officials on the project, had sessions with each of the network companies presenting their plans and also met with the Authority Committee (in the same way that the companies did).

The time required to engage in a meaningful way with all the business plans was significant and for ED1 the CCG tried to rebalance their effort to focus more on policy issues with Ofgem.

The expertise and experience of the Group was considered to be very valuable by the policy team and the opportunity to explore issues in depth was welcomed – indeed, if anything, the team felt they could have benefitted from more time with the Group. It was seen as important that CCG members had a reasonable understanding of energy and of regulation and could recognise what the *network* issues were when wider policy issues such as smart metering were raised. CCG played an important role in challenging thinking around the wider policy context for the price control. Appropriate briefing for Authority members is important to help them understand the CCGs role and manage expectations.

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<sup>8</sup> <https://www.ipsos-mori.com/Assets/Docs/Publications/Ofgem%20Panel%204.3.pdf>

Timing the meetings so that the CCG was able to provide useful input – rather than just receiving reports and updates – was quite difficult and requires planning. Having the opportunity to call ad hoc meetings at short notice – or use email exchanges outside the meetings – might help. Another option might be to allow individual CCG members to focus on particular issues and to circulate comments to the wider group.

While brief notes were published on the CCG's input to the process<sup>9</sup> more could perhaps have been done to increase the public prominence of this group to increase the legitimacy of the process.

At the end of the RIIO process the CCG wrote to Ofgem setting out their observations on the process – see Appendix 4. While generally positive about the CCG's role it does identify a number of ways in which the regime could be improved including raising questions about their role in discussing the cost of capital (or company financial structures more broadly). In line with the learning from other sectors this highlights the importance of being clear up front what the role of any such group is in order to manage expectations. While the CCG members were selected to bring more specialist experience and hence to allow them to contribute to some of the more technical aspects of a price control, there remain questions how far issues such as cost of capital are ones that should fall within the scope of enhanced engagement. In line with the lessons from other sectors, providing clarity about the role and managing expectations could help avoid frustration on both sides.

The letter also sets out potential criteria for how the success of a CCG style group should be judged – covering legitimacy, understanding, process and impact. It also makes suggestions for how such a group could be used on an ongoing basis including in the retail market space (where Ofgem has now established a Consumer Progress Panel to play a similar role supporting the implementation of the CMA remedies).

### *Price Control Review Forum*

This was a new forum introduced as part of RIIO, aimed at bringing a wider set of stakeholders into the process including suppliers, networks, the HSE and specialist consumer / business and environmental groups. The regular involvement of one member of the CCG in the PCRf gave the CCG a wider perspective and helped give visibility and legitimacy to the CCG.

The consensus was that this was a useful process but that given the range of stakeholders and the breadth of issues to be covered in a short time the discussions were inevitably superficial. The group met 5 times during the course of RIIO ED1 but attendance by some of the organisations was patchy, reflecting the fact that special interest groups could struggle to justify attending a half day meeting with a broad agenda. Consideration could be given to having some more targeted meetings to encourage attendance from special interest groups.

As with CCG, timing the meetings so that the PCRf was able to provide useful input – rather than just receiving reports and updates – was quite difficult and requires planning.

One of the main benefits of the group was that it allowed stakeholders to understand the perspective of other groups on issues where there was not a consensus – for example business consumers engaging with the concerns of fuel poverty groups or with environmental groups worried

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<sup>9</sup> <https://www.ofgem.gov.uk/network-regulation-riio-model/riio-forums-seminars-and-working-groups/consumer-challenge-group>

about visual amenity. It also provided an opportunity for national organisations to engage with the network companies as a group where there were common issues across the business plans. Overall the benefits were probably more about helping communicate with stakeholders than really shaping policy thinking.

### *Communications*

In RPI-X@20 a commitment was made to improve the accessibility of Ofgem documents to facilitate participation by a wider group of stakeholders. However, this remained challenging given the scope and complexity of price controls. For example, at Draft Determinations Liverpool City Council, on behalf of the core cities, commented that:

*“Large parts of the document are financially or technically too specific for us to comment on ... The opacity of the processes and regulation is a major concern going forward as the pool of informed participants that could potentially offer useful opinions or participate is becoming increasingly narrowed by the complexities of the process.”*

Ofgem’s failure adequately to respond to issues raised by BGT during the consultation process was one of the factors that motivated their appeal. The CMA’s conclusion was that while there were some shortcomings relative to best practice in GEMA’s consultation process these did not prevent BGT from responding to consultation and as such the procedural flaws did not amount to an error of law. However, there are clearly opportunities to learn and improve for RIIO2.

A dedicated stakeholder lead within the price control team might help in ensuring communications meet the needs of the wider stakeholder community.

## Company enhanced engagement - The steps in the RIIO process and where consumer engagement fits in

The process for setting a price control is a complex one that extends over several years. Part of the RIIO process as described in the RIIO Handbook is a standard set of steps. While Ofgem may decide to revisit these in thinking about the next round of RIIO, for the purpose of this report I have used the current process as a framework for setting out how and where the consumer input came in and where it was seen as most valuable.

### *Stage 1: Ofgem Strategy Development*

The RIIO process typically kicks off with an open letter seeking views on the range of issues that are expected to shape the particular control. For RIIO1 with its new focus on outputs this was the first time some elements had been looked at in the price control. Part of the RIIO philosophy was that key parameters should be determined up front at the strategy stage - including the cost of capital and design of quality of service incentives. The thinking was that having this clarity up front would allow the companies then to prepare their business plans and engage with stakeholders based on a clear understanding of Ofgem's position on those parameters where Ofgem can form an independent view.

The consensus from those I spoke to was that this was a critical phase for Ofgem's enhanced engagement process. Consumers and wider stakeholders are able to articulate what they saw as the areas that they wanted companies to focus on in their plans. In particular:

- the Consumer First panel was used to provide a broad steer on focus areas ;
- the Consumer Challenge Group similarly was able to provide a more expert view of industry trends (eg smart metering) and how these should be reflected in the companies' plans.

Because of the desire to set out details on particular incentives in the strategy a lot of work had to be done up front and this was essentially where some of the key customer trade-offs around willingness to pay for service improvements came into play. The majority of discussions on these issues was done through working groups which were open to anyone to attend but inevitably the companies tended to dominate as they had the resources to devote to these meetings.

The deficiencies in this as a form of engagement was highlighted by the British Gas appeal against the RIIO ED1 decision, given that they appealed against the structure of the interruptions and customer service incentives - but had not actually engaged in the working groups where these issues were debated.

While a formal link was made between the PCRf and the CCG by requiring at least one CCG member to attend PCRf, this was not seen as practical for the working groups. Even the working group on customer service did not actually have a consumer representative at most of its meetings.

There is therefore a risk that some of the key discussions around cost-quality trade-offs did not benefit as fully from consumer input as they might have done.

This also impacted the engagement approach in the companies. In WPD's case, for example, they had engaged with their customers around some service standards based on DPcR5 but then had to revisit that feedback when Ofgem amended the standards. This process seemed to work but again it

does beg a question about whether Ofgem had sufficient direct consumer input into the standards that it set at the strategy stage.

What the companies were typically setting out in their business plans was the detail of how they would meet the outcomes (eg what they would do to provide more support to vulnerable customers) rather than looking at the design of incentives.

Some of the rationale for this was that through the strategy consultation process Ofgem was looking to develop standard incentive structures that could be used across all companies. It was accepted that in some cases there would be regional specific factors and companies could argue for different approaches (higher standards) in their business plan bids. This has some logic in terms of setting standards for an essential service and it also facilitates the process of benchmarking across companies. However, it does stand in strong contrast to the Ofwat approach where part of the rationale for the company focussed CCGs was that the issues and trade-offs would vary by region. In part this is a reflection of the fact that there is no national water grid and hence standards can vary very materially between regions - with some facing water shortages and regular hose pipe bans while another may have adequate water but face high charges linked to a long coast line.

In ED1 Ofgem did ultimately agree to some different service standards as a result of stakeholder input to the companies' plans. For example, for UKPN London Ofgem agreed a higher service standard (with higher associated cost) recognising the importance that Westminster council and others attached to the capital city having a resilient network. Moreover the extent to which regional considerations may dominate could become more of an issue in energy for RII02 with potentially different strategies on the future of gas depending on the wider characteristics of the region and also with different rates of growth of distributed generation.

An important early question for Ofgem to decide in RII02 is therefore the extent to which it will continue to set national standards. As a minimum, there would seem to be a case for lowering the threshold for consumer driven changes to be accepted as part of the business plan process. Signalling clearly areas such as this where Ofgem would accept a negotiated settlement could help make the company engagement process more meaningful.

Also for stakeholders to be able to input effectively to a debate with the company on standards they really need to have comparative information across companies. Ofgem is now trying to do more in terms of annual reporting and benchmarking on an ongoing basis which should provide a better context for discussions at RII02.

### ***Stage 2: Development and assessment of company business plans (fast track)***

Based on Ofgem's strategy the companies then have to submit their business plans - although it is assumed that they will have been doing significant preparatory work.

This first phase of the development of the business plans is where the companies put significant effort into their own engagement with stakeholders. The process they adopted in the development of their plans - including explicitly their approach to stakeholder engagement - is one of the factors that Ofgem considered in deciding whether or not to fast track a company. At ED1 5 out of 6 of the companies achieved a "green" rating for process on their initial plans - the one that scored "red" was more an issue with data reliability than stakeholder engagement.

Annex 3 gives examples of the different approaches taken by the companies. The expectation is that for future price controls companies will learn and build on this early experience.

As part of assessing the plans Ofgem carried out a public consultation to get stakeholder views and also invited the companies to present their plans to the Ofgem Consumer Challenge Group who were able to scrutinise both the content of the plans and the companies' approach to engagement.

Overall the sense was that the stakeholder engagement had been very valuable as Ofgem commented in its decision on Fast Track:

*"We consider that the level of stakeholder engagement undertaken as part of RIIO ED1 represents a significant improvement on previous price controls. DNOs have adopted different approaches and we would particularly like to highlight NPG's use of expert panels and the breadth and depth of WPD's approach that built upon their long-standing framework for engagement. All DNOs provide evidence that they have engaged with a broad range of stakeholders and used engagement mechanisms that are targeted to reflect different stakeholders needs. We consider that improvements in stakeholder engagement have had a significant impact on the quality and transparency of DNOs' business plans, Stakeholder feedback is generally positive. However there are differences in quality between those DNOs whose stakeholders have influenced the development of the business plan proposals from the outset and those where stakeholders may have been engaged more to endorse proposals. We also note that while most plans include full details of engagement, some were not clear how they evaluated and monitored the effectiveness of their stakeholder engagement approach."*

Efforts to differentiate between groups of stakeholders and tailor engagement to meet their needs was a feature of a number of the companies' plans.

WPD in particular identified a hierarchy of levels of interest / understanding for different stakeholders which informed the approach it took to engagement with these different groups.

All companies used a range of different methods for engaging covering surveys, social media, town hall events, parliamentary / local government engagement etc. A number also used branded campaigns to raise awareness and encourage direct consumer feedback (eg ENWL's "Switched-on: North West campaign").

Some efforts were also made to think about how to bring in the perspective of future consumers for example by engaging with students or technology experts.

One feature of the companies' plans was that they typically included a much wider range of outputs than Ofgem had determined in its strategy document. As such the outcome of engagement was less about the design of the regulatory incentives and framework and more about what the companies would actually do on the ground. The companies all accept that delivery of these outputs - which have been agreed with stakeholders - is a commitment that they can be held to account for. However, in most cases these outputs are not embedded in licence as they do not represent part of the package of outputs that Ofgem had identified as required and are much more tailored to local needs. As such the approach to holding companies to account for these wider business plan outputs is simply through the process of annual reporting. Given the commitment to ongoing stakeholder engagement and the need to retain credibility this seems sufficient for these wider outputs.

### *Stage 3: Fast track decision and resubmission of plans*

Based on its assessment of the business plans against a mix of criteria Ofgem decides whether any of the plans are of a sufficient standard to be able to "fast track" them and accept the plan as it stands. Across all the RIIO controls the main area where plans fell short was on efficient costs - although one or two companies fell short in other areas as well. Ofgem provided detailed feedback on the plans but it was aimed at the companies not at their stakeholders.

Off the back of this companies were invited to submit updated business plans. Again, the expectation was that stakeholders would be involved in developing these revised plans.

Ofgem then carried out a further round of assessment and decided on the overall revenues that would be allowed. This was set out in the "Draft Determination" for consultation and confirmed in the "Final Determination". By this stage the focus was much more squarely on cost efficiency and benchmarking which means that in general the role for consumer input to Ofgem's decision was arguably more limited. However, there were areas where companies relied on stakeholder input to push back against Ofgem's Draft Determination to trim allowances in particular areas.

At times, it appeared that the consumer / stakeholder groups were being used to defend the companies' initial bids and were being warned by the companies that Ofgem was planning to take steps that would endanger delivery of the plan. While this could be positioned as "capture" there is a sense that if the stakeholders have genuinely contributed to the development of the plan then they will perhaps not unreasonably have that view. Ofgem did not take any steps to communicate its decision to company stakeholders in a way that would have allowed them to align behind that challenge which is something that could be thought about for future reviews. While there were good reasons why Ofgem did not engage directly with the companies' stakeholders (made more difficult by them having diverse arrangements) something was lost through this. Ofgem could think about other ways of addressing this going forward for example by producing "guidance notes" for stakeholders - written in a more accessible way than its formal decisions – or holding some sort of event. If it is left to the companies to explain Ofgem's concerns and proposals to their stakeholders they will inevitably put some of their own spin on it.

The other challenge for Ofgem is that once it got into its more conventional modelling and benchmarking it was easy to lose sight of particular elements of the business plan that had been explicitly included in response to stakeholder requests. In principle Ofgem should have been ready to accept those local decisions (assuming the costs were clearly set out to customers) even if it had not formally committed to do so. In a few cases, following feedback on its Draft Determination, Ofgem did make adjustments but for future price controls a clearer statement up front on how far Ofgem would respect such decisions would help.

Talking to a couple of the CEOs it was clear that from their perspective the big gain was in getting senior management and wider staff engagement – really bringing home that what they do impacts customers and helping deliver the culture change and consumer focus that Ofgem was seeking.

## Ongoing engagement

While the focus of debate in regulatory circles has been on the role of consumer engagement in reaching the price control settlement, part of the RIIO philosophy was to seek to create a culture change in the companies and to encourage ongoing engagement. As the companies have had the opportunity to learn and refine their engagement process, some of these more recent experiences provide additional learning. In particular, I look at three case studies - the ongoing consumer and stakeholder engagement incentive, the experience of the gas decompressors reopener and the experience of the connections grid constraints in the south west.

### *Ongoing consumer and stakeholder engagement incentive*

One element of the RIIO incentive structure is an annual incentive around consumer satisfaction / stakeholder engagement. The precise form of the incentive varies between sectors and in particular whether or not the companies concerned have any direct involvement with end consumers (which the distribution companies do but transmission companies do not).

For transmission, there is a stakeholder engagement incentive with a % of revenues available for companies based on how well they engage with their stakeholders. The companies provide a submission setting out what they are doing in this space. Provided this meets certain basic criteria the company gets the chance to present to the stakeholder panel appointed by Ofgem and comprising experts in consumer and stakeholder engagement. They give a marking to each company which can translate into an additional revenue allowance.

For distribution, the same stakeholder engagement scheme applies but as part of a "Broad Measure of Customer Satisfaction" which also includes direct measurement of customer satisfaction for customers who have some direct dealing with the network company (either as a result of having an interruption or a new connection). This is judged through a survey where Ofgem prescribes the methodology but which is conducted by the companies. There are also measures around performance on complaint handling. On electricity distribution the stakeholder incentive assessment includes a specific assessment around support for vulnerable consumers. On gas distribution there is a discretionary reward scheme - again judged by a panel - for social and environmental initiatives.

For electricity distribution the aim of the incentive is set out as being "to encourage proactivity with stakeholders in order to anticipate their needs and deliver a consumer focussed, socially responsible and sustainable energy service". The expectation is that stakeholders will be considered broadly to cover consumers, investors, regulatory authorities, local government agencies, NGOs and other interested organisations.

The stakeholder incentive has been running for several years now and the feedback from the panel is that companies are continuing to learn and improve. The published feedback is generic rather than company specific although individual companies do receive feedback. While there is a set relationship between the scores and the level of financial reward - the fact that the panel award their marking on a subjective basis means that the bar can be progressively raised over time as stakeholder expectations rise and companies learn from each other. Typically, the distribution



companies have done better than transmission (perhaps reflecting their closer contact with the end consumer) but with a wide spread across each group.

The consumer satisfaction measure is based on standard questions used by the Institute of Customer Service (ICS) which allows for cross sectoral comparisons. Where previously the incentive was set based on a relative standard across companies in a particular sector, for RIIO ED1 an absolute standard was used with the idea being that companies should be rewarded if they were among the top performing companies in any sector. The top performing distribution companies are now securing satisfaction ratings on a par with some of the best known high street brands and winning awards for their performance.

The driver for this high performance is both the financial rewards that are available but also a competitive rivalry that sees companies wanting to appear at the top of the table and vying with each other for that pole position. How they achieve these high scores varies between companies but with a broad measure like this it is only possible to achieve really top scores by properly understanding what it is that matters to customers and delivering on that. This means that customer panels, ongoing research and other forms of engagement have to be embedded into the way the company works.

While the customer satisfaction and complaints incentives are more focussed on the day to day operational decisions and do not feed directly into price controls, they are certainly achieving the culture change that RIIO was looking for, moreover the expectation must be that this customer mindset will also help shape business plans when it comes to the next price control.

#### *NG Gas Transmission Compressor reopener*

As part of the RIIO arrangements there are mechanisms in place for dealing with uncertainties by providing for reopeners to cater for particular areas of costs that could not be accurately forecast at the time of setting the control. On National Grid's Gas Transmission price control one of these related to the need for them to modify or replace some of their larger gas turbines dependent on changes to European environmental legislation (the Industrial Emissions Directive) of which the implications were not clear when the price control was agreed.

These are in some ways like mini price controls and provide a good case study of how consumer engagement / negotiated settlement could be used.

The extent to which particular items of equipment would need to be upgraded or could be given a derogation (eg for low utilisation) would be very dependent on the flows of gas through the network and the pattern of those flows could be expected to change materially over time with different sources of gas becoming more important. Consistent with the RIIO philosophy, National Grid put significant effort into engaging with stakeholders as part of developing its plans in this area. The key stakeholders were suppliers and gas shippers who are the users of the network. In this case – where the key issues are around levels of on-take and off-take onto the system it seems quite reasonable to view these as properly representing the consumer interests and a true “consumer panel” would have had little to contribute. National Grid set up a dedicated web page (“Talking Networks”), held three workshops and carried out two consultations, taking stakeholders through some very technically complex issues.

When National Grid submitted its reopener request (worth £280m) to Ofgem it emphasised the strong stakeholder support that it had for its proposals. However, Ofgem remained concerned about the costs of the proposals and the extent to which National Grid had fully considered all the options open to it. Ofgem therefore consulted on a proposal to reject the re-opener request. The responses to that request highlighted both the strengths and weaknesses of National Grid's approach and the tensions between clearly respecting stakeholders' views but this needing to be informed by suitable evidence on cost efficiency<sup>10</sup>.

National Grid in their response said:

*"Stakeholders have actively engaged in the development of the IED submission and are supportive of the plans which will deliver the network that our customers require. The process followed in reaching Ofgem's minded to position has, in our view, created a risk that stakeholders will see little merit in contributing to future RIIO debates."*

Energy UK (on behalf of a range of stakeholders) said:

*"We found these events to be very well run by National Grid taking on board the issues that were important to stakeholders, being very responsive to questions and providing good feedback to these, also being open minded to new options as they were suggested. Assessment of the options was undertaken in a qualitative way as cost information was not available or it was not appropriate to share this with the industry. The traffic light system was helpful in communicating this, although occasionally the materiality of the cost differences was difficult to judge".*

*"While we accept that further cost and technical analysis provided in the consultant's reports is valuable in informing Ofgem's position we also consider that stakeholders views should not be put aside at this time".*

British Gas as a supplier said:

*"National Grid has put considerable weight on the stakeholder engagement undertaken in this process. We agree that stakeholder engagement was of a high standard and that our views, and those of other stakeholders, were sought and taken account of. However it is important to understand the nature of this .. was to assess whether the approach proposed by National Grid was directionally sensible and not to sign-off or rubber stamp the detailed plans and submission.*

*We still expect Ofgem to perform its role in ensuring that specified requirements are met and network plans are efficient and offer value for money."*

Taking on board these comments and in the light of the steers that it had given National Grid early in the process around the need for a CBA Ofgem concluded that:

*"We think a clear demonstration of the costs and benefits of each option is an important part of the stakeholder engagement, to help stakeholders in forming their views"*

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<sup>10</sup> <https://www.ofgem.gov.uk/publications-and-updates/consultation-draft-decision-nggts-application-under-riio-t1-compressor-emissions-uncertainty-mechanism>

In Ofgem's view the omission of quantified cost benefit assessments from the stakeholder engagement process meant that stakeholders could not engage effectively. As such it rejected National Grid's request – though it remains open for them to reapply in 2018.<sup>11</sup>

Reflecting on the lessons from this:

- It was a disappointment to all sides that more reliance could not be placed on the stakeholder engagement in this particular instance given that these more technical issues do seem potentially more amenable to negotiated settlement.
- Ofgem had consciously not attended the stakeholder sessions in order to avoid its views dominating the process. However, this meant that its dissatisfaction with the process seemed to come a bit out of the blue. Even if it did not attend the sessions some clearer written guidance to both National Grid and the stakeholders might have helped set expectations and deliver a better process.
- In this particular instance the concerns were less about cost efficiency (where stakeholders might have needed Ofgem's input) but more about the range of options on the table and the information to make choices between them – which stakeholders probably could have done effectively if the information had been available to them. In feedback to National Grid afterwards Ofgem argued that if that they wanted stakeholders to be able to take responsibility for these decisions then they needed to have analysis presented to them in the same way as the company would present options to its own board.
- The timetable for reopeners is extremely tight and hence it might be hard for Ofgem to provide its input through guidance notes etc. as WICS did. But given that cost of capital and general efficiency are typically less of an issue for these reopeners there is more scope for Ofgem to rely on the output of a stakeholder engagement process in cases like this provided the information on the relative costs of different options is made available to stakeholders.

### *South West Grid Connections*

Providing connections to the network is an important element of what distribution network operators do and one that is growing in importance with the increase in local renewable energy. In developing their business plans Ofgem gave guidance to the companies to follow National Grid's "Gone Green" scenario in anticipating likely levels of Distributed Generation connections although Ofgem also expected them to engage with their stakeholders to understand their views on likely levels of connections.

In the event, solar energy has grown at levels that far exceed any predictions being made at the time and as a result, in 2015, WPD (the DNO covering the south west of England) reached a position where it was unable to connect any more solar farms.

One of the issues this raises is how far WPD should have been able to spot this issue coming and how well it dealt with consumers through that process.

In talking to WPD Ofgem highlighted the commitment that WPD gave in its business plan to meet all requests for DG connections.

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<sup>11</sup> RIIO-T1: Our decision on National Grid GT's application under the RIIO-T1 Compressors Emissions Uncertainty Mechanism (30 September 2015)

As well as the general stakeholder engagement incentive discussed above, there is also an Incentive on Connections Engagement (ICE) for customer engagement in relation to larger connection projects. This is a new incentive as part of RIIO ED1. Companies are expected to prepare a plan setting out how they will improve the service they provide to connection customers and then report at the end of the year on how they have done against that plan. Ofgem consults the relevant customers (housebuilders, generators etc) on how well the company has engaged.

While there were quite a few issues being raised by politicians and others about the south west grid constraints, the feedback from stakeholders was that WPD managed the situation well and were able to explain clearly the reasons for the problems and what was happening to address them. As is often the case, how a problem situation is handled is a good test of customer service and WPD appeared to do well in this instance.

They have also taken on board the lesson about needing to keep their business plan refreshed and to get continuing input from stakeholders about the levels of connections likely to be needed. As such they have developed their own version of the scenarios that National Grid produce at a national level.

However, there was still a sense that WPD only acted once Ofgem raised the issue in the context of WPD's licence obligations rather than in response to customer feedback. To be effective the regime needs stakeholders to be "tough" and to pick up on failures to deliver. Again there is a role for Ofgem in the messages it sends to empower others, closer to the issues, to play their part in holding companies to account.

While the issues facing WPD were particularly high profile this is an issue facing all DNOs and Ofgem published an open letter as part of the ICE process making a number of these points.<sup>12</sup>

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<sup>12</sup> <https://www.ofgem.gov.uk/publications-and-updates/consultation-getting-electricity-connection-when-network-constrained>

## Conclusions and Recommendations

Overall, in terms of consumer engagement, my conclusion is that Ofgem should look to build on what was done at RIIO1 rather than look at a completely different approach. I have summarised below some specific suggestions for Ofgem to consider as it gets closer to RIIO2, in addition to the high level messages in the Executive Summary.

### *Enhanced company engagement*

Continue with the "competitive" model of stakeholder engagement recognising this has led companies to innovate and improve on how they engage beyond simply having a stakeholder panel.

However, recognising that all companies do have panels, think about whether there is anything that could be done to either facilitate pooling of input from national bodies (such as NEA) or to allow some engagement between a central CCG and the panels to address the resource constraints facing some specialist bodies.

Continue with the broad focus on stakeholder engagement rather than a narrow view of consumers recognising that this helps in bringing in a future consumer perspective (eg through understanding technological change) and the wider spectrum of network users that exists for electricity networks. However, this should not detract from a clear focus on domestic consumers and vulnerable consumers in particular.

Consider whether more could be done to support elements of negotiated settlement on the transmission networks where the network customers are effectively other industry players.

### *Enhanced Ofgem engagement*

Continue with the CCG but make sure that its remit is clearly defined and that the appointments process is transparent. In particular, it is important to clarify whether the role of the group is essentially to challenge of Ofgem's thinking as a critical friend (which may by its nature limit how transparent it can be) or whether it is more limited in terms of validating the consumer engagement approach taken by the companies. While the experience is that the challenge role was very useful it is clearly dependent on the willingness of those involved from Ofgem to be open and accepting of that challenge. Thought could also be given to how this might sit with other panels that Ofgem is now looking at establishing such as an academic panel and a cross-regulator group on cost of capital. Increasing the public prominence of the group could give the overall process greater legitimacy.

Continue with the PCRf but with a clearer articulation of its role as engaging a wider group of stakeholders and hence with a focus on building mutual understanding across different groups and information sharing. There may be value in having some more targeted sessions to avoid special interest groups having to sit through a full agenda. Having someone on the price control team responsible for stakeholder engagement could help with planning these sessions and maximising their benefit.

Consider carefully the number and structure of working groups to ensure that consumer / stakeholder input is fed into Ofgem thinking on the design of incentives at the strategy stage.

Having a stakeholder lead could also help with ensuring that documentation is more accessible. This objective of RIIO was not really met - certainly not in the latter stages of the programme. The companies' business plans provide some good examples of how to present the information in ways that are more accessible to stakeholders.

## Annex 1: Experience from other sectors

The main source of information for this Annex is the excellent UKWIR report "The Future of Customer and Stakeholder Engagement in the Water Industry" by Harry Bush and John Earwaker referenced above.

### *Ofwat*

The foundations for the Ofwat approach were laid down in a "customer engagement policy statement" published in August 2011. Ofwat called for a three-tiered approach to enable customers to engage with and influence all parts of the companies' business plans:

- direct local engagement, typically on local priorities and issues that could have a significant impact on the services customers receive;
- a company Customer Challenge Group (CCG);
- a sector wide customer advisory panel which Ofwat would set up and run.

The CCGs' role was to be to:

- review the company's engagement process and the evidence emerging from it
- challenge the phasing, scope and scale of work required to deliver outcomes and
- advise Ofwat on the effectiveness of the company's engagement and on the acceptability to customers or otherwise of its overall business plan and Bill impacts.

Ofwat made clear that the effectiveness of engagement would be an important factor in them deciding whether to accept the company's business plan - but the CCG wouldn't agree the plans or prices with the companies.

Ofwat left the establishment of the CCGs to the companies but with a steer on the sorts of members it expected to see and the need for an independent chair.

The CCGs were required to contribute to the formulation of the companies' plans but also, when Ofwat required the companies to resubmit their plans, to comment on the changes.

There was also an expectation of a much greater level of consumer research as the companies sought to consider customer views more explicitly (and earlier) in developing their plans. This supported the CCGs in their challenge role.

The feedback is that this research played a key part in shaping proposals around social tariffs, leakage, greater emphasis on demand management etc. It also helped the companies get a much richer view of their customer mix and identify 'hard to reach' customers.

Having to explain engineering solutions to CCGs in lay terms helped focus the companies on what was to be achieved rather than what was to be done. It was the beginnings of a culture change which is now embedded through the CCGs role in monitoring company performance against promised outcomes and performance measures.

Different CCGs approached their tasks rather differently. Some focussed very strictly on the research evidence as the basis for challenge while others roamed more widely. Having chairs from CC Water (who do have a broader role) may have encouraged this. As a result, some CCGs spent time and effort on issues that were ultimately going to be the preserve of Ofwat. This applied particularly to

the cost of capital and efficiency but also to whether large investments had been properly justified. There was also some confusion over how far CCGs were to get involved in the incentive design. The report recommends greater clarity around roles for PR19, to avoid CCGs having to opine on difficult issues of regulatory architecture and allow them to concentrate instead on outcomes and performance.

A lesson here for Ofgem is the need to be clearer how far it is willing to tolerate local variations in standards (and accusations of postcode lottery), including implications for comparative benchmarking. Ofwat said in the policy statement that "different customers in different areas have different concerns and priorities" but they did place limits on how far incentives could vary.

There were some concerns that Ofwat was distant from the CCG process and hence did not give it as much weight as it might have. The report concludes Ofwat could have struck a better balance, attending at least some CCG meetings (while acknowledging the need to avoid the CCG process becoming regulator-centric). Ofwat could also have provided more data into the process on comparative performance and encouraged cross CCG dialogue. Some prior scene setting analysis on the priorities facing the sector could also have been helpful.

The quality regulators (drinking water inspectorate and environment agency) sat on CCGs but were concerned about the potential conflict in their roles. The report recommends more selective involvement on specific issues for PR19.

CC Water provided the chairs for 12 out of 18 of the CCGs while also being a member of the groups. CC Water's experience of the sector and the process was a benefit but also gave a weighting to their views which made cross CCG working harder between the two types of group. CC Water have said that going forward they will not provide chairs for groups but will focus on their consumer advocacy role.

The report recommends clearer definition of roles to avoid duplication and the risk of disappointment that may come from CCGs focussing on issues where their view then seems to be ignored. While this might appear to constrain the scope for engagement it would better reflect the underlying realities of the regulatory arrangements and allow CCGs to focus on where they can add most value.

The involvement of the CCGs placed a premium on having a clear process and timetable. There was some criticism from stakeholders around the overall process, with a number of late or unexpected interventions that CCGs then had to respond to. Having clarity on the WACC earlier in the process could arguably also have helped the dialogue around price-service trade-offs. This would have meant giving up on the revelatory benefit of competition on this element but arguably it was limited anyway.

For CCGs to be effective they need to be seen to be independent. With CC Water backing down, the chairs will be appointed and paid by the companies. While the companies should want truly independent chairs (to reduce the risk of challenge later in the process), the report notes that there is an issue around perception and suggests some practical steps around appointment of chairs to minimise the risks. On CCG members too, there is a need for transparency on appointments and for a balance to be struck between continuity of membership providing expertise versus the risk of



capture. Having Ofwat more closely engaged with the CCGs could help reinforce the independence and also encourage applications from good people if it was clear that posts were influential.

There is discussion in the report on whether some CCGs had been captured by the companies as they supported a high WACC or endorsed the company plans (which Ofwat then cut back). The report concludes that this was not necessarily capture in the traditional sense but first links to the lack of clarity over roles (eg on WACC) but also the fact that if the process is effective the company will shape its plans to respond to CCG comments and hence alignment may be a result of the process working not a sign of failure. It could be helpful for CCGs to articulate the process they went through to make this clearer.

One challenge raised is how far the benefits of "business plan competition" (as Ofwat have - akin to Ofgem's fast track process) is compatible with a negotiated settlement where plans can be agreed bilaterally.

More recently, and hence not covered by the Bush / Earwaker report, Ofwat have published guidance on the approach to be taken to consumer engagement for the next price control PR19<sup>13</sup>. Ofwat are largely retaining the same approach but with more guidance on the composition of the CCGs and additional principles around what constitutes good engagement.

Other reviews of the Ofwat process carried out by those involved, and which will have informed Ofwat's thinking for PR19 include:

- the Consumer Council for Water "Customer Challenge Group Process: Review of lessons learned" (2014)
- the Consumer Council for Water "A Tide of Opinion: the Customer Voice within the Price Setting Process" (2015)
- Reports for individual water companies looking at options for the future process (eg a report by Frontier for Wessex Water looking at going further down the negotiated settlement)
- Ofwat's "Reflections on the price review process leading from PR14". (2015).

### *Water Industry Commissioner for Scotland (WICS)*

In addition to the Bush / Earwaker report there are a number of other reports exploring in depth the WICS experience, including various reports by Professor Littlechild<sup>14</sup> and the Customer Forum for Water in Scotland's Legacy Report.

The centre piece of the WICS negotiated settlement was a Customer Forum established in 2011 off the back of a formal cooperation agreement between WICS, Scottish Water and Consumer Focus Scotland. This set out the basis for appointing the chair and other members.

The initial role envisaged for the Customer Forum was to deal with price control matters remitted to it by WICS. However, in 2012 its remit was broadened to securing agreement with Scottish Water on a business plan consistent with ministerial objectives.

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<sup>13</sup> [http://www.ofwat.gov.uk/wp-content/uploads/2015/12/pap\\_pos20160525w2020cust.pdf](http://www.ofwat.gov.uk/wp-content/uploads/2015/12/pap_pos20160525w2020cust.pdf)

<sup>14</sup> For example

[http://www.rpieurope.org/Publications/Studies\\_New\\_Series/Studies\\_NS\\_4\\_2\\_Littlechild\\_July\\_2014.pdf](http://www.rpieurope.org/Publications/Studies_New_Series/Studies_NS_4_2_Littlechild_July_2014.pdf)

WICS' role in the price control was therefore essentially facilitative. Although legally WICS remained responsible for the decision it had signalled clearly that it would accept the outcome of the negotiation.

That said WICS was still firmly involved in the process in areas where its expertise was most relevant. In the run-up to publication of Scottish Water's business plan, WICS published 14 Customer Forum Notes setting out the regulatory view on a range of issues - with a further 8 following publication of the plan and commenting on it.

For example, following the draft plan WICS said that "as the scope for cost savings by Scottish Water over the period may only result in relatively modest downward adjustments, the Customer Forum may be better advised to focus on seeking defined and observable improvements in levels of service". As the Bush / Earwaker report notes, this demonstrates that WICS was not only providing factual analysis but also a clear steer as to where the Forum should focus its efforts.

In terms of process, the Customer Forum engaged closely with Scottish Water (most directly through an Engagement Committee) and following quite extensive negotiation eventually reached agreement on a plan. Having been advised that agreement had been reached, WICS published this plan as its draft determination, commenting on the extent to which this aligned with the guidance that it had issued as part of the process.

The process was seen as a success in moving beyond consultation to real engagement. Through this the outcomes were felt to be more positive for consumers than a traditional regulatory process would have delivered, including:

- Indexation of prices to CPI which customers can relate to;
- Simultaneous consideration of price and service;
- Identification of some detailed points but which did matter to consumers.

The report notes the difficulty of identifying the counterfactual and that WICS provided strong steers throughout this process. However there does seem to have been a strong desire in WICS to get Scottish Water to own its plan and its relationship with consumers, which the revised process helped deliver in terms of culture change.

In terms of lessons for water the report highlights:

- the role that consumer engagement can play in driving culture change;
- the commitment that came from both sides from being clear that the result really would matter;
- the importance of trust between the parties leading to open engagement
- the different perspective that can come from consumers (even where the regulator does clearly have consumer interests at heart) eg where consumers seem willing to pay more to prevent leakage than economic analysis would suggest is justified.

The success came in part from the fact that the regulator really believed that the issues that needed to be addressed at this stage were ones where consumer input would be most valuable - looking at subtler issues around consumer interest. The regulatory timetable was then specifically developed to allow for more early engagement.

This led to a shift in role for the regulator - not so determinative or intrusive but more strategic, guiding and facilitating the interaction of other players. It collected less but more strategic information. This was reflected in reduced staffing and a different skill mix (which also helped make sure it happened!)

There is no reference in the report to the fact that Scottish Water is state owned which creates a different political context in respect of outperformance for example.

Unlike Ofwat's hands off approach with the CCGs, WICS was heavily involved through the engagement process. The guidance notes were important and helped set out the ground in areas where the regulator would have a natural advantage. The guidance notes effectively became a series of regulatory decisions though they may not have been recognised as such at the time. They were not prescriptive and the parties could have taken a different view. However, they were quite definitive and covered a full range of issues such as views on capex and opex efficiency compared to England and Wales, service performance, financial tramlines etc

The Forum had 8 members and a chair all jointly agreed by the three parties but with Consumer Focus Scotland taking a lead in nominating 5 members from a consumer background and WICS nominating 2 retailers and one other. The group wasn't intended to be representative of Scottish consumers but brought a range of experience and a duty towards consumers. Again, there was a strong body of research that provided the basis for the group to challenge proposals.

In terms of considering whether the WICS model could be applied to England and Wales the report notes that it would be harder with multiple players in terms of the regulatory involvement and need to look across the sector. But there may still be learning that can be drawn in terms of roles, guidance notes and some level of engagement.

The report does note that the Forum's views were not tested in an adverse political arena. If they had been they would have had to rely for their legitimacy on the standing of the individuals and the appointment process given they are not a statutory body. Again, there is little transparency around how the company moved in response to challenge from the Forum.

The effectiveness of the process was heavily reliant on the calibre of individuals - in particular the chair.

Similar issues arose as with CCGs in terms of resource commitment and questions of rotating members (experience v fresh blood). On the Forum, the quality regulators were not represented but fed in in other ways.

### *The Aviation Sector*

The CAA's encouragement of "constructive engagement" between regulated companies in the aviation sector and their airline customers was one of the first attempts in the UK to have customers directly engaging with regulated entities as a part of a price review. It has now been use in two price reviews.

The idea is that airports should first seek to agree relevant sections of their business plans with airlines before submitting them to the CAA. This would be focussed on those areas that most directly affect the cost and quality of the services received and on which they are therefore better placed to

judge than the regulator, based on their commercial and operational experience. This included volume and capacity requirements, service standards and the nature and level of capital expenditure linked to modernisation.

Importantly certain issues were excluded from the process where airlines were expected to have less to contribute or where there was effectively a zero sum game ie operating expenditure, the cost of capital and commercial revenues.

The CAA accepted that agreement might not be possible on all the areas identified but hoped that the process of seeking agreement would at least narrow down the areas of disagreement.

The CAA set out a light touch process in terms of timetable and broad expectations. However, it resisted calls for day to day CAA involvement or reporting back for fear that this would undermine the discussions between the parties and result in a reversion to a regulator led approach.

The results of the initial exercise were mixed with no progress at Stansted (which reverted to a traditional regulatory model) but good progress at Heathrow and Gatwick on capex and service levels. However, there were still traditional tensions around the levels of charges and eg government imposed security requirements. As a result, the final determination was highly criticised and the CAA was taken, unsuccessfully to judicial review by one of the Gatwick airlines.

However, despite its difficult beginning, constructive engagement has become an established part of the regulatory landscape in airport regulation. The CAA accepted that a clearer mandate to the parties upfront setting out what was expected would increase the likelihood that the discussions would be constructive - and this was reflected in the 2010 NERL review. As a result, the CAA published a Mandate for Customer Consultation which set out expectations from the process.

Subject to consideration of how far the negotiated outcomes were consistent with the interests of passengers and others not directly represented (such as potential future competitors) the CAA said it was minded to accept agreed outcomes.

For the 2014 airports review it extended the scope to include all aspects of the business plan. However, in the end, it did not prove possible to secure agreement across such a broad set of issues.

Consistent with the experience elsewhere the lessons learned were:

- Focus the negotiation on areas of the greatest customer knowledge;
- The importance of clarity over process;
- Commercial parties' interests will not always align with those of passengers and there may be different interests reflecting the different commercial models of different airlines (which are hard to capture in an overall engagement process rather than bilateral contracting). The existence of a regulator may also distort incentives to settle;
- Regulatory pre-commitment to the outcome of the constructive engagement is important;
- The importance of context (eg enhanced security costs or wider political debates about the future of airports).

More recently, and hence not covered by the Bush / Earwaker report, the CAA have decided to use a Consumer Challenge Board to provide external challenge to Heathrow on its business plan from a

consumer perspective<sup>15</sup>. The Board will also provide the CAA with independent advice on the extent to which the plan is informed by high quality engagement and whether the outcomes and incentives in the plan reflect that engagement. The CAA consulted on the terms of reference for the Board but the appointment of the chair will be through a tripartite arrangement involving the CAA, Heathrow and a representative of the airlines (reflecting the continued importance attached to constructive engagement).

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<sup>15</sup> <http://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=7545>

## Annex 2: International experience

### Australia

The Australian energy regulatory regime has sought to draw on UK experience in introducing arrangements for enhanced consumer engagement. Looking at how they have built on the UK experience and their own lessons learned from following similar processes could be helpful for RIIO going forward.

Energy Consumers Australia (ECA) recently produced a paper<sup>16</sup> looking at the lessons from the UK on negotiated settlement and consumer engagement looking across all sectors but highlighting in particular the WICS / Scottish Water example.

In terms of context, following a rule change request by the Australian Energy Regulator (AER) the rules were amended by the Australian Energy Markets Commission effectively to require network companies to support their price control bids with evidence from consumer engagement, much as RIIO does. The AER produced guidance for the networks on consumer engagement [AER 014].

However, the ECA paper notes that the AER has given limited guidance on what is expected, there are no incentives for good quality engagement and the AER's own Consumer Challenge Panel wrote twice to the AER raising concerns about the quality of network business engagement.

The ECA paper concludes that:

- consumer engagement does benefit from working to an outcome rather than a prescriptive process;
- there are elements of a price control that need to be determined by the regulator rather than through negotiation including the cost of capital and efficiency;
- the regulator needs to be clear how the contribution of the Consumer Forum will be used in the determination.

Another way in which Australia has followed the UK example is in the creation in 2013 of a Consumer Challenge Panel (CCP) to act as a critical friend in the way Ofgem's CCG does<sup>17</sup>. Indeed, Dr Gill Owen<sup>18</sup> who was on the original Ofgem CCG helped set up the Australian CCP and drew on her Ofgem experience, as well as her experience on the Ofwat board, in doing so. Her paper on the AER website includes a detailed assessment of the role of the CCG in DPCR5.

One example of a development to the UK model was that the CCP had a budget allocated to them which they could use to commission their own analysis on particular issues. They then submitted formal papers setting out their views to the regulator - for example a 56 page report on their views on the New South Wales companies' plan - as well as reports on specific issues such as smart metering or the company's own consumer engagement. Given the limited resources that are available to consumer groups in the energy sector, this is an idea that could be worth considering.

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<sup>16</sup> Negotiated Settlement and Consumer Engagement - UK Experience and lessons for Australia ECA Research report 2 - May 2016

<sup>17</sup> <https://www.aer.gov.au/about-us/consumer-challenge-panel>

<sup>18</sup> Sadly Gill passed away earlier this year. Given her strong contribution to regulatory thinking and real commitment to consumers, she will be sorely missed.

The AER has recently carried out an independent review of the effectiveness of the CCP<sup>19</sup>. This found that overall the CCP had strong support from stakeholders but highlighted some similar issues to those flagged in the body of this report around the need for clarity as to the scope and limitations on the role of the CCP, clarity over the specific issues on which their input would be most valuable and when their input would be sought, and the need to articulate where CCP input has influenced AER decisions. It also raised issues around efficiency (reflecting the fact that AER establishes separate sub-panels for each review) and skills mix (to include technical skills as well as consumer engagement).

## *US*

The US model is different in that it is based on rate of return regulation with rate case hearings when the company wants to change its prices. They are already in effect a negotiation between consumers and the firms with the regulatory commission there to rule based on the evidence presented by the two sides. The settlement process was introduced to help deal with a backlog of rate cases.

As noted in the body of this report Professor Stephen Littlechild has argued for the GB to follow this model of negotiated settlement as it reduces the regulatory burden and the outcomes more closely reflect the needs of customers themselves. The scope for innovation is also greater as there is no longer the same pressure for regulatory uniformity from one utility to another. And there is always the scope for the regulator to intervene if settlement cannot be reached.

The conclusion from Ofgem's RPI-X@20 review was that the overall regime in the US was very different to that in the UK and hence the US model could not simply be replicated here even if one wanted to – although clearly there are elements of the approach that can be adopted and learning that can be drawn.

## **Annex 3: Examples of RIIO ED1 Engagement by the companies**

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<sup>19</sup> [https://www.aer.gov.au/system/files/NOUS%20Group%20-%20Review%20of%20the%20Consumer%20Challenge%20Panel%20-%20AER%20-%20Independent%20report%20-%206%20April%202016\\_2.pdf](https://www.aer.gov.au/system/files/NOUS%20Group%20-%20Review%20of%20the%20Consumer%20Challenge%20Panel%20-%20AER%20-%20Independent%20report%20-%206%20April%202016_2.pdf)

As a part of the RIIO process the companies had to demonstrate how their plans had been informed by consumer / stakeholder engagement. As such there is quite a lot of material published by the companies setting out the steps that they took. Ofgem reviewed this material in considering the case for fast tracking but provided only fairly high level comments on the relative performance of the companies as set out in the body of this report. This Annex draws on the companies' reports to provide a fuller summary of the different approaches adopted.

As noted in the body of this report many of the service standards were set by Ofgem in the RIIO ED1 strategy document as part of designing the relevant incentives. What the companies were typically setting out in their business plans was the detail of how they would meet the outcomes (eg what they would do to provide more support to vulnerable customers) and also what level of service they should be aiming to achieve. However, the actual incentives around interruptions for example were designed by Ofgem.

By not prescribing the approach to be taken Ofgem encouraged innovation and ownership of the engagement process by the companies. Inevitably there were differences in how well this was done and in particular there is a differentiation between them in terms of those who have senior management involvement in their stakeholder programmes, those who engage on an enduring basis pre- and post- price controls and those that clearly act on the feedback they receive. Companies across all sectors can look at these examples in helping think about best practice going forward.

The ongoing incentive on stakeholder engagement provides a further source of examples and evidence of what the companies are doing on stakeholder engagement but that evidence has not been reviewed here. Full details including the company submissions are on Ofgem's website.

### **Electricity North West - ENW<sup>20</sup>**

ENW had a phased approach to their engagement:

Cycle 1 Preparation and Introduction: ENW recognised that a clear barrier to engagement was a lack of knowledge about who they are and what they do. The purpose of this phase was therefore largely educational including the establishment of a new campaign and brand identity "Switched On: North West". This included a website, social media, educational videos, roadshows and school visits. Views were sought on the broad trade-offs between reliability, sustainability and affordability.

Cycle 2 Main engagement phase exploring issues in more depth. This included workshops bringing diverse stakeholder groups together, MP events involving fuel poverty experts, further roadshows, surveys etc. The views from this informed the business plan - but also highlighted several areas where different stakeholder groups had different views (eg on undergrounding, investment to support new connections).

Cycle 3 Analysis and evaluation in which ideas were tested further and in particular an external stakeholder panel used to test the engagement process that had been adopted to date.

An example of where stakeholder feedback helped shape the plan was around the challenges of fuel poverty and the need to deliver the plan more efficiently to avoid imposing further burdens. It also

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<sup>20</sup> <https://www.enwl.co.uk/docs/default-source/enwl-wjbp-2014/enwl-140317-annex-1---stakeholder-methodology-and-responses.pdf?sfvrsn=4>



led to specific additional measures to support vulnerable customers such as upgrades to the network in the vicinity of various hospitals and care homes, enhanced training for front line staff.

### **Northern Powergrid - NPg<sup>21</sup>**

The company reached out to 88,000 customers during the development and consultation of the plan and 4,800 stakeholders were involved in shaping it. NPg's plans were subject to extensive consultation with 81% of surveyed customers endorsing the final business plan.

The plans were praised by stakeholders for their clarity and readability. In particular, the quality of the website was highlighted for the ease of accessing information, including full data tables, by stakeholders and Ofgem alike. The supporting information for the final plan included tables showing specific examples of stakeholder feedback and how they had shaped the plan.

NPg used a mixture of panels, workshops, surveys and online activity to involve customers and stakeholders in developing the plans and then seeking to refine them in the latter stages.

NPg set out clearly the phases of their activity:

- an initial open phase of engagement (focus groups, interviews and workshops) to get initial views on service delivery and identify the areas for further exploration, with a demographically balanced sample of customers and stakeholders. This included their stakeholder panel and supporting expert groups advising on the engagement programme as well as contributing their own views;
- The second phase comprised a more targeted engagement with specific stakeholder groups (suppliers, innovation, vulnerable customers, connections customers; utilising expert panels and other events);
- The third phase was a formal consultation on the plan to get feedback and assess overall support (including door to door interviews in four known hot spot areas, an online community and telephone interviews) prior to final submission. This third phase included surveying customers' support for individual elements of the plan, as well as the overall submission.

Research was carried out with customers involved in all aspects of one particular and large distributed generation project – understanding end-to-end the customer's experience of NPg's service and their aspirations for its future. 300 customers who had previously complained were included within research on customer services alongside wider customer focus groups; and 249 NPg employees (more than 10% of the total workforce) were consulted on the future of the business through a series of focus groups.

The specialist panels that NPg used throughout the process were commented on positively by Ofgem. The specialist vulnerable customer panel that NPg convened included some high-profile figures such as the chief executive of NEA and the chair of the Fuel Poverty Action Group. The specialist innovation panel provided one way of thinking about future consumers (and how needs might change faced with changing technology) and included academic as well as practitioner expert

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<sup>21</sup> [https://www.yourpowergridplan.com/som\\_download.cfm?t=media:documentmedia&i=1727&p=file](https://www.yourpowergridplan.com/som_download.cfm?t=media:documentmedia&i=1727&p=file)

input. NPg used specialists to run focus groups aimed at particular audiences, notably NEA ran the series of focus groups aimed at understanding the priorities of those in fuel poverty.

Involving wider stakeholders highlighted some of the tensions. For example, willingness to pay research with consumers showed a strong interest in bill reductions and limited support for "strategic investment". However, this strategic investment option received significant support from wider stakeholders. Ultimately NPg went forward with a small improvement in this area.

### **SP Energy Networks - SPEN<sup>22</sup>**

SP Energy Networks placed an emphasis on working with a broad range of stakeholders (from large demand customers to small generation and domestic customers), local authorities, developers, contractors, suppliers, research bodies, environmental groups and others. They also used a variety of means of engagement - using workshops and events as well as interviews.

Given the very different nature of their two networks, SPEN engaged on each plan separately. For example, stakeholders in Scotland wanted more done for poorly served customers and earlier reinforcement of the network (although these were not supported by the willingness to pay research).

SPEN set out a clear phasing of their engagement with a strong focus on early engagement, seeking out stakeholder views on priority areas before preparing the draft plan allowing stakeholders to inform both the draft and subsequently the full plan:

- Phase 1 - broad range of stakeholders working together to identify priorities.  
*Phase 1 was carried out using a combination of engagement routes allowing SPEN to collect the broadest possible range of stakeholder views – from workshops, customer focus groups and surveys to individual interviews where necessary. This exercise identified 30 priority areas from the Ofgem Output categories, from which stakeholders then identified the top 6 for prioritisation within the plan.*
- Phase 2 - draft plans with financial implications for customer bills  
*Phase 2 was the presentation of the draft plans to stakeholders, with plans built from stakeholder priorities and feedback collated from phase 1 and utilising willingness to pay methodology. Stakeholders were able to influence the plans in an informed manner with clear information on the impact on customer bills. Stakeholders were able to challenge investment plans and outputs to allow SPEN to further refine the business plans in line with their feedback and what they felt was important to them. A particular innovation in this area was that SPEN provided an online tool that allowed customers to select and adjust/reselect a mix of options to match a mix of priorities to a bill that they thought was acceptable.*
- Phase 3 - summary of revised business plan published  
*The revised business plan was published in a user-friendly document specifically designed for stakeholders and in plain English. SPEN consulted for a 4-week period with stakeholders, and*

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<sup>22</sup> [http://www.spenergynetworks.co.uk/userfiles/file/201403\\_SPEN\\_LearningFromStakeholders\\_LW.pdf](http://www.spenergynetworks.co.uk/userfiles/file/201403_SPEN_LearningFromStakeholders_LW.pdf)

*results concluded that SPEN had taken into account the wishes of the stakeholders with a consistent score of over 80% satisfaction on survey.*

- Phase 4 – refinement

*SPEN continued to engage with stakeholders following submission. For example, they created a social obligations working group which served to determine the detailed delivery of their social obligations strategy.*

Other points they highlighted in presenting their stakeholder approach were:

- Senior management involvement;
- Independent external review (of both the content of the plan and also their approach to stakeholder engagement which they assessed against the Stakeholder Engagement Assurance Standard which focuses on inclusivity, materiality and responsiveness);
- Giving stakeholders the detail needed to make informed decisions (but using targeted material aimed at being understandable by those involved);
- Using willingness to pay research including plotting against importance and showing the cumulative bill impact (an idea taken from another DNO but which SPEN developed to cover commercial and industrial customers, not just domestic);
- Sharing the business plan via a highlights document specifically designed for stakeholders in terms of its language, length and focus on aspects stakeholders had expressed interest in, with information available in a range of formats and levels of detail.

Areas that they highlight stakeholder engagement as having impacted their thinking were on flood protection (where there was support for more to be done) and storm resilience.

### **SSE<sup>23</sup>**

SSE followed a programme of engagement based on street and telephone surveys, consultation, focus groups, an online survey, parliamentary events and later in the process deliberative stakeholder events used to inform the business plan. Stakeholders were categorised on an influence / interest basis.

Papers were prepared setting out the business response in a number of areas identified as key issues by stakeholders – connections, social obligations, customer service, reliability, safety and environment.

The engagement reached a significant number of customers and resulted in a range of specific commitments to stakeholders around notice periods for planned outages, contact methods, handling of "worst served customers", provision of information on unplanned outages etc. The report shows the level of support for each of these commitments.

SSE carried out a review of their approach to engagement compared to other DNOs and also had their engagement approach externally audited.

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<sup>23</sup> [http://www.yourfutureenergynetwork.co.uk/wp-content/uploads/2014/03/RIIO-ED1\\_SSEPD\\_BP2\\_Mar14\\_what\\_our\\_stakeholders\\_think\\_71.pdf](http://www.yourfutureenergynetwork.co.uk/wp-content/uploads/2014/03/RIIO-ED1_SSEPD_BP2_Mar14_what_our_stakeholders_think_71.pdf)

## UKPN<sup>24</sup>

UKPN also put strong emphasis on stakeholder engagement throughout the process.

Since 2011, UKPN incorporated an extensive programme of consultation on all aspects of their business plan to ensure that they met the expectations of their customers and other stakeholders and delivered value for money over the long term. Engagement included 15 Critical Friends Panels, willingness to pay research with over 1,200 customers, more than 500 stakeholder interviews, over 25 issue specific forums and various meetings with key Central London stakeholders.

UKPN's engagement identified a number of key issues that consistently came through as most important to stakeholders which were then included in UKPN's business plan. These were:

- Increased business transparency;
- Improved customer service (particular in connections);
- Infrastructure development;
- Transition to a smart grid;
- Vulnerable customers and
- Efficiency of cost delivery.

Having published its draft business plan for consultation, UKPN held Critical Friends Panels across their regions seeking feedback on key initiatives to be considered for the business plan under each heading. UKPN had a pool of over 70 people who attended these Critical Friends Panels sessions covering consumers, environmental groups, investors, government interests, industry parties, local interest groups, innovative industry parties (e.g. electric vehicle developers), utilities and developers. They sought to create a "core" of panellists who would attend all the panel sessions and be consulted on all aspects of the plan. They also recognised that some people would have narrower interests and hence they were just invited to the panel session that covered the subject matter of their interest. Reports were written up and shared with attendees after each panel. Feedback from the panels was that they valued the involvement of senior management and felt their views were being listened to.

The geographical areas covered by UKPN are quite different including both rural East Anglia and London itself. Having flexibility in the approach to engagement meant that appropriate representatives could be involved in each area recognising that the views of different customer groups could often be in conflict.

The willingness to pay research undertaken by UKPN revealed three themes which received the greatest attention from these stakeholders (and which are now reflected strongly in UKPN's business plan). These were investment in infrastructure; connections and network reliability.

From this, stakeholders asked for UKPN to shorten the restoration times, rather than reducing the frequency of power outages, although there was clearly willingness to pay for both. UKPN

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[http://library.ukpowernetworks.co.uk/library/en/RIIO/Main\\_Business\\_Plan\\_Documents\\_and\\_Annexes/UKPN\\_Process\\_Overview.pdf](http://library.ukpowernetworks.co.uk/library/en/RIIO/Main_Business_Plan_Documents_and_Annexes/UKPN_Process_Overview.pdf)

responded to this in their business plan and included investment to support targeted Quality of Supply improvements.

The UKPN report includes examples of "you said - we did" across the range of outcome areas, as well as explaining where, for practical or other reasons, it was not possible to implement suggestions. For example, as a result of stakeholder engagement UKPN included in its business plan additional investment for changes to inspection and fault processes to improve the quality of electricity supplied in Central London.

As well as the Critical Friends Panels, UKPN engaged with stakeholders by holding a number of issue specific sessions and one to one interviews so feedback could be gained at a more in-depth level. It included engagement on specific topics such as performance during storms, vulnerable customers, metal theft, street works, low carbon innovation and competition in connections. It also included engagement on major investment projects, such as the mayor's London Infrastructure plan and for distributed generation in the East of England region.

### **Western Power Distribution - WPD<sup>25</sup>**

WPD was highlighted by Ofgem as having a strong approach to stakeholder engagement. WPD have a well-articulated strategy of engaging at different levels depending on the level of interest and understanding of the stakeholders concerned. In particular, they had a panel, held workshops, engaged through mass media and sought to reach future consumers through engagement with students.

WPD had been engaging with stakeholders for some time and has had a customer panel since 2009, ahead of RIIO being adopted. The customer panel meets quarterly and includes representatives of their diverse customer base. It started with 11 attendees and has expanded to 20 permanent members covering the Red Cross, Major Energy Users Council, B&Q, Energy Saving Trust, the Co-op, RVS, Warwickshire Police, Severn Trent Water, West Coast Energy, Clearwell Parish Council and Lincoln University.

In addition, they held 20 stakeholder workshops in different locations across the region, attracting 650 stakeholders. The sessions focussed on different aspects of service and explored options for investment and cost, the corresponding service improvement and the bill impact. There were facilitated discussions and electronic voting.

To engage groups with no prior knowledge of WPD they ran a "power for life" awareness campaign which involved sending a newsletter to all customers and also used TV ads to raise awareness and invite input. This helped underpin the consumer research around willingness to pay.

Finally, they ran for workshops aimed at future consumers, trying to involve students at Nottingham and Bristol universities.

As with many of the companies, senior management were directly involved in the panel and the workshops.

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<sup>25</sup> <https://www.westernpower.co.uk/docs/About-us/Stakeholder-information/Our-future-business-plan/Seperate-documents/Stakeholder-Engagement.aspx>

WPD also set out clearly the different phases of engagement with a strong focus on early engagement to help shape their business plan - ie they were not simply "consulting on a completed plan":

In the first phase, they were seeking to understand the priorities attached to different outputs by customers through workshops;

In the second phase, they were testing willingness to pay for different levels of these outputs. The conclusion of this research was that it showed a high level of willingness to pay for improved service. However, these findings were challenged by WPD's consumer panel who were concerned about any increase in bill levels. This sort of challenge of traditional research findings is a benefit of having input from different sources. Building on this WPD factored in the actual costs of delivering different service levels, bearing in mind the panel concerns about bill pressures. This allowed them to test different options and different packages of options as part of the process of developing the business case - and for stakeholders to contribute based on full information about the bill impacts of different options. Ultimately the research showed consumers preferred a lower cost solution than the original willingness to pay research had indicated.

In the third phase, they consulted on their business plan starting with workshops on the options for investment and costs. This informed the business plan which was then subject to formal consultation with stakeholders ahead of being submitted to Ofgem.

In its documentation WPD set out what the stakeholder feedback had been on the different categories of outcomes and how they had responded to that feedback in developing their plans. The areas covered were network reliability and availability (including during normal weather conditions, resilience to severe weather and service to "worst served customers" who experience high levels of interruptions); safety; environment (including oil and gas leaks from equipment, improving visual amenity and low carbon technologies LCTs); connections (time to connect and communication); Customer satisfaction (customer communication and guaranteed standards payments); social obligations (priority service customers and fuel poverty).

## **Annex 4: Letter from Ofgem's CCG**

### **RIIO-ED1 Consumer Challenge Group Open Letter to Ofgem**

Dermot Nolan  
Chief Executive  
Ofgem

8 December 2014

By email

Dear Dermot

### **Reflections on RIIO ED1 and the role of the Consumer Challenge Group**

We write as the Consumer Challenge Group (CCG) to share our thoughts on the RIIO-ED1 process with Ofgem and other stakeholders, examining: (a) how we carried out our role; (b) how Ofgem used the CCG and responded to the perspectives of CCG members as the RIIO-ED1 process developed, and; (c) where we see opportunities for improvement and the potential value in continued use of such a consumer challenge function for Ofgem.

We have previously reported publicly at different stages of the RIIO-ED1 process, first in April 2013<sup>26</sup> and then in December 2013.<sup>27</sup> Together with this open letter, these short briefings represent a good record of our activities and the issues we raised over the course of the RIIO-ED1 process from mid 2012 to late 2014.

### **CCG recruitment, composition and legitimacy**

The CCG was newly recruited for RIIO-ED1, the original CCG having served for three previous price controls (DPCR5, RIIO-T1 and RIIO-GD1). The recruitment process provided an opportunity both to refresh membership and to bring in additional consumer-oriented insights (particularly business consumer interests and academic understanding of consumer vulnerability). It also established useful continuity through the re-appointment of two members of the original CCG.

In our view this created a good combination: knowledge of both the DNO businesses (from DPCR5) and the role and potential of the CCG in the regulatory process together with fresh perspectives to reinvigorate our role in challenging Ofgem and the DNOs.

The regular involvement of a CCG representative in Ofgem's Price Control Review Forum provided good visibility of the CCG to the wider group of stakeholders involved and the opportunity for CCG members to hear a broader range of consumer views. We also believe it helped to reinforce amongst stakeholders the value and legitimacy of the CCG as a component of the regulatory process.

### **The DNO business plans and the CCG interaction with the DNOs**

For those of us involved with previous price controls, we found the business plans were a significant improvement on those produced for DPCR5 and, by the TOs and GDNs, for the other recent RIIO price controls. We hope that this was in part due to the effort of members of the CCG who were involved at a very early stage in the business planning process to share with DNOs their perspective of what constituted a well justified business plan. This particularly focused on sharing lessons learned from previous RIIO price controls (T1 and GD1) in terms of: structuring and presenting business plans; the use of stakeholder engagement within the business planning process (and beyond) and; the quality of their understanding of the households, businesses and organisations they ultimately serve.

In spite of this improvement, we found that companies varied significantly in their ability to maintain a consistent strategic narrative – a 'golden thread' – through their business plan. Some well written

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<sup>26</sup> See <https://www.ofgem.gov.uk/ofgem-publications/57546/consumerchallengegroupforriio-ed1.pdf>

<sup>27</sup> See <https://www.ofgem.gov.uk/ofgem-publications/85234/ofg513-consumer-challenge-group-riio-ed1-dec13-web.pdf>

plans still struggled to explain how the finely worded commitments presented would actually be achieved (particularly given past company performance) and what the different initiatives would cost customers. This suggested a lack of understanding in some DNOs of the purpose of the business plan (as opposed to either marketing literature or a regulatory submission). We observe that the quality of the performance of the company teams in the bilateral interviews with the CCG proved to be broadly consistent with the quality of their business plans.

We held bilateral interviews with each DNO and found these very useful. A healthy dialogue developed with each company during the hour-long sessions, highlighting weaknesses in their approaches and, we believe, enabling them to understand better the concerns arising from the strongly consumer-oriented perspectives of CCG members.

We believe that the fact we asked challenging questions of the companies (and, in many cases, challenged their answers) will have helped to reinforce in the companies' minds that positions being taken by Ofgem during the course of the RIIO-ED1 process were not simply 'Ofgem's view' but were also the product of thoughtful and legitimate input from the CCG.

### **CCG's over-arching approach and key challenges to Ofgem**

Early in the RIIO-ED1 process, the CCG made it clear that their priority was to provide challenge to Ofgem rather than to the DNOs. This resulted from reflection by the re-appointed CCG members that the CCG for RIIO-T1 and RIIO-GD1 may have focused too much of its efforts criticising the company business plans (alongside Ofgem officials) rather than providing constructive challenge on Ofgem's methodology or honing in on the efficacy of its responses to inadequate company plans.

We were therefore focused more assiduously throughout RIIO-ED1 on:

- how Ofgem was approaching the RIIO-ED1 process,
- how it was interpreting and evaluating the DNO business plans, and
- how it was thinking about the available regulatory instruments as tools to achieve the desired outcomes.

This focus was exhibited in our sustained attention on the extent to which Ofgem staff had a clear picture of (a) the behaviours which they wanted the DNOs to exhibit and (b) the relationship between their proposed regulatory approach and the likelihood of securing of those behaviours.

This attention provided challenges during RIIO-ED1 which Ofgem staff consider influential on their thinking with respect to:

- The need to be explicit about the business behaviours being sought from the DNOs during the RIIO-ED1 period – and how they differ from typical DNO current practices (i.e. the nature and scale of changes required of the DNOs).
- The use of innovation to manage business challenges and risks and the importance of integrating this into routine business practice, across technical, operational and commercial aspects of the DNO business, bringing forward learning from the Low Carbon Network Fund, learning from other companies (including in other sectors and abroad), and improving the quality of internal systems and business discipline for realising these opportunities.
- The need for DNOs to have a stronger role in identifying and supporting customers in vulnerable circumstances and for Ofgem to reflect this in specific and meaningful social output



requirements to stimulate strategically coherent approaches and effective initiatives from the DNOs.

- The vital role of good quality understanding of the DNOs ‘customers’ attached to their wires and the potential for this to be developed now from available data and business intelligence.
- The extent to which Ofgem was providing clear enough challenge to the DNOs on how they were preparing to make the most of the opportunities of smart meter data during the ED1 period.
- The need to consider company-specific risks as well as generic regulatory uncertainty mechanisms .
- The importance of ensuring that any reliance on ‘reputational risk’ (as perhaps the weakest regulatory tool) to secure DNO behaviour change was rooted in an effective approach which recognised Ofgem’s own potential role in this area (by public naming and shaming, exposing DNOs poor performance to each other in face-to-face settings etc).

We consider that Ofgem staff made good use of the CCG during the process. They readily identified issues on which they wanted CCG input and structured our sessions to enable this input. The team generally responded well to CCG challenges, revisiting issues and bringing in appropriate staff and/or information to enable us to examine matters in further detail. We were briefed well on how Ofgem’s positions were developing during the RIIO-ED1 process and given timely opportunities to comment.

We also explored regularly and usefully with Ofgem staff the public presentation of its proposals and the need to explain each proposal and decision in terms of how it reflected and protected consumers’ interests. We considered this particularly important in any decisions made with respect to fast-tracking, given the potential benefits to any fast-tracked DNO.

### **Issues deserving further consideration**

While we believe our intended focus on challenging Ofgem was effectively sustained throughout the process, it did expose some issues which were never fully resolved in spite of their rather obvious importance (particularly with the distinct benefit of hindsight) to this regulatory process.

- **The qualities of an effectively operating DNO and how it would need to develop over the next 8 years to meet wider policy objectives and serve longer-term consumer interests**

Much of our discussions with Ofgem staff around, for example, the use of smart data and smart network management techniques (and the associated emergence of the system operator role) hinged on different views of when the energy ‘system’ as a whole might need such activity at scale from the DNOs – and therefore whether it was more suited to ED2 than ED1. The lack of a clear and shared picture of the qualities of an effectively operating DNO and the nature of its future development made it challenging to assess and judge DNO business plans. This said, the gap reflects uncertainty in the wider policy arena (including within DECC and the industry) as to the nature the future ‘smarter’ electricity system, the speed and trajectory of the transition towards it, and the role of a DNO within it. We also fully recognise that if DNOs are to take ownership of their plans and manage their risks accordingly, they need to develop their own understanding of what the future might look like and how they need to develop to address it.

We believe it would be valuable for Ofgem to consider the role of the regulator (and others) in establishing this picture, without which the ultimate goal of the regulatory process is far less clear.

- **The nature and challenges of organisational behaviour/culture change and the likely effectiveness of different regulatory tools in securing such change.**

There were a number of occasions during CCG sessions where questions were raised about both the behaviours Ofgem was trying to stimulate in the DNOs and the rationale for the regulatory approach proposed as the stimulus. The ensuing discussions revealed the complexity of the relationships between corporate behaviours (particularly in heavily regulated monopoly companies, in some cases parts of complex larger corporations, facing a new regulatory regime) and different regulatory interventions.

The discussions also revealed to us the potential value in exploring these issues in far more detail across Ofgem. Regulatory practices and approaches have tended to be rooted in economic theory and financial analysis, rather than in an understanding of organisational psychology and change management or in authentic insights into commercial pressures and practices.

- **Ofgem's current model of DNO company financing**

We explored on a number of occasions during the RIIO-ED1 process the extent to which Ofgem's model of DNO financing reflected the current realities of corporate structures and global financing options. Given its potential to reduce DNO financing costs, we considered this important to the final regulatory settlement (in terms of WACC) and thereby to impacts on costs to consumers. However, while this issue was acknowledged as important by Ofgem staff during the process, it was considered something 'for the future'.

We welcome Ofgem's commitment to explore this important issue in the near future and consider that a mechanism needs to be put in place to enable the consumer voice to be effective and heard in these deliberations. However, we remain concerned that there may be opportunities available now to the owners of at least some of the DNOs to secure and structure their financing at lower costs of capital than anticipated in Ofgem's determinations of WACC. We would therefore urge Ofgem to initiate further exploration of this issue immediately and to monitor and to undertake to report annually on developments in the financing arrangements of the TOs, GDNs and DNOs, and on their financial and ownership structures .

- **Monitoring and reporting arrangements *between* price reviews to be developed and introduced in a timely way.**

At an early stage in the process, the CCG highlighted the contribution that such arrangements can make to behavioural change within companies. Overly bureaucratic monitoring and reporting arrangements can clearly be counter-productive. However, we consider that providing a mechanism to keep consumers in touch with business plan delivery between price reviews is important.

We urge Ofgem to think further about how consumers' perspectives are included in monitoring performance *between* price reviews, and to ensure that this activity is resourced and implemented in a timely manner.

## The future role of the CCG

We believe that the CCG has contributed effectively to Ofgem’s price control processes since DPCR5. It has strengthened Ofgem’s understanding of consumer interests in relation to the transmission and distribution businesses and helped to ensure this improved understanding has been reflected within the regulatory settlements put in place.

With the RIIO price controls now in place for 8 years, we would encourage Ofgem to reflect on how a CCG could continue to be of value by contributing to (a) the further work we have identified above; (b) within ongoing monitoring of progress within RIIO, and (c) more widely across Ofgem’s activities.

We would anticipate that, beyond RIIO, the ‘expert consumer perspective’ represented by the CCG could provide meaningful input to your work on retail market reform, consumer vulnerability, and, more generally, codifying the interests of existing and future consumers.

## Benchmarking the CCG

The expert consumer challenge function represented in Ofgem by the CCG is being adopted in various forms by other regulators, both in the UK and in other parts of the world. We find this a welcome development and believe Ofgem has been a pioneer in this field. We have now given some thought to how the quality of this expert consumer challenge function could be performance assessed and benchmarked. To this end, we have identified below a number of dimensions against which we think this function could be measured.

<b>LEGITIMACY</b>	<p><b>Legitimacy:</b> including skills &amp; experience and diversity of group, approach to recruitment, clarity and appropriateness of Terms of Reference, nature and levels of engagement with wider stakeholder groups (potentially including at the local level), etc</p> <p><b>Transparency:</b> openness of reporting of activities and issues raised</p>
<b>UNDERSTANDING</b>	<p><b>Vision:</b> clarity of CCG view of (a) the consumer interests the CCG is representing and (b) of the desirable regulatory outcome in terms of business behaviours</p> <p><b>Context:</b> CCG understanding of the context of the price control and its implications (e.g. developments in technology, relevance of issues of affordability and consumer vulnerability, wider system trends and policy priorities)</p>
<b>PROCESS</b>	<p><b>Access:</b> to information, Ofgem staff, and regulated companies</p> <p><b>Timeliness:</b> of involvement in process (so that interventions have opportunity to influence key decision points and between price controls themselves)</p>
<b>IMPACT</b>	<p><b>Challenge:</b> to Ofgem and to regulated businesses (and the balance between the two)</p> <p><b>Influence:</b> on Ofgem processes and decisions and on the regulated businesses</p>

We believe these dimensions could usefully be developed into a balanced scorecard to assist Ofgem and other regulators to assess the quality of their expert consumer challenge function.

We would like to thank the Ofgem staff for their openness during the RIIO-ED1 process and particularly to Anna Rossington who marshalled and encouraged the RIIO-ED1 team to engage meaningfully and honestly with us from start to finish and to Phil Sumner who marshalled and encouraged us so effectively as the CCG.

We would welcome the opportunity to explore with you the issues we have raised in this open letter.

Yours sincerely

The Consumer Challenge Group members

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Linda Lennard, Visiting Fellow, Centre for Consumers & Essential Services, University of Leicester

Sharon Darcy, Board Member, Consumer Futures

Paul Smith, Chief Executive, 4PsMarketing

Heather Brash, Former Convener, Waterwatch Scotland, & Former Vice-chair Scottish Consumer Council

cc.

Sarah Harrison, Ofgem

Phil Sumner, Ofgem

Anna Rossington, Ofgem

Maxine Frerk, Ofgem