

Strengthening the economic regulation of the energy, water and telecoms sectors

Consultation response



Introduction

Citizens Advice gives people the knowledge and confidence they need to find their way forward - whoever they are, and whatever their problem. Our network of independent charities offers confidential advice online, over the phone, and in person, for free. Last year we helped 2.6 million people in person, by phone, email or webchat. Our advice website had over 60 million views.

Citizens Advice represents the voice of consumers across essential markets. We have a statutory duty to represent energy consumers across Great Britain and post consumers in England and Wales. Our work to improve the policies and practices that affect people's lives across a range of markets has informed our response to this call for evidence.

We are responding to this call for evidence in our capacity as the statutory advocate for energy consumers across Great Britain.

Executive Summary

Citizens Advice welcomes the attention that government is focussing on improving economic regulation. The role that regulators and the regulatory processes will play over the coming years will be crucial. And we agree with government that there are a range of improvements required to ensure the regulatory regime is fit for the challenges of protecting consumers, delivering value for money, growing the economy and meeting net zero.

Multi-sector PSR - We strongly welcome the proposals for a multi-sector priority services register, something we have been advocating for for a number of years. Improving the ease with which consumers can sign up, maintain and manage information about their circumstances will deliver significant benefits through better identification of needs, support and services. We particularly welcome the proposal for government coordination which we believe is required.

Comparative performance targets - We agree with the proposal for greater use of comparative and relative targets and metrics in monopoly sectors. The information asymmetry between regulators and regulated companies makes setting fixed targets ahead of time challenging, and has too often led to rewards which are too easily achieved at the expense of consumers. We agree that it is right for regulators to create competition among monopoly companies where natural competitive market forces do not exist to better deliver value for money for consumers and incentivise performance. Government should indicate clearly that regulators should identify opportunities to introduce this as early as possible, such as in RIIO-3 in energy, to prevent the delay of benefits this can bring.

Flexibility in appeals - We agree that it is important to ensure the CMA has the appropriate flexibility it needs to ensure that it has the time and the appropriate representation and resource in panels to hear appeals. We also welcome the proposal to allow the CMA to recover costs in energy code modification appeals in a fairer way when appeals are only partially successful. The proposal to enable energy appeal interveners to have their costs provided if the intervention is in the public interest is also welcome.

Regulatory reform gaps

We also believe there are a range of critical improvements which are missing from the consultation proposals where we think further review and attention is essential. We welcome the opportunity to work together with government, regulators and other bodies to develop solutions that are in the public and energy consumers interest.

Regulatory asymmetries - There are fundamental asymmetries in resources, commercial interest, and process in the regulatory regime between the regulated companies and those who represent consumer and the public interest.

- **Recommendation** - government should set out a more explicit remit for regulators to actively recognise these asymmetries and proactively rebalance them to ensure that consumer interest and the consumer voice are heard throughout the regulatory processes.

Appeals - We strongly welcome the recognition by government that there are imbalances in the energy appeals regime. However, we believe more ambition and reform is required to solve these problems. The energy appeals regime does not have a contained effect but casts a long shadow over regulatory processes and decision making which lead to generous decisions in favour of regulated companies and at the expense of customers.

- **Recommendation** - A fuller review of the existing processes in water and energy appeals should be undertaken. This should develop a solution which addresses the significant barriers to consumer representation in appeals, the issue of cherry-picking inherent in energy, and appeals being a routine low-risk game. While the proposals on interventions are welcome we are concerned that, on their own, they will not address these issues.

Targeted Energy support - We welcome the ambition for affordability support to be better communicated to both domestic and non-domestic consumers. However, we estimate that over 2 million people will disconnect because they can't afford to top up by the end of winter¹ and total debt held by domestic energy consumers now stands at almost £3 billion. The need for extra support is

¹ Citizens Advice, [Shock proof: breaking the cycle of energy crises](#), January 2024

likely to endure over the coming years, and we do not believe current policies are well designed to respond.

- **Recommendation** - A tiered Warm Home Discount (WHD), with expanded eligibility and differential support based on energy need.

Addressing risk/reward - We welcome the proposals to introduce more central planning. This move represents a transfer of risk from networks to consumers.

- **Recommendation** - government should explicitly set out to regulators that they must reflect both regulatory and government policy changes which increase regulatory and investment predictability, and reduce risks, when calculating the weighted average cost of capital (WACC).

It cannot be fair or a just transition if private investment is de-risked in reality, while being rewarded as if the risk of investing has not changed. We believe this would jeopardise already low public trust and confidence in regulated companies and regulators, impacting the investment climate.

UKRN guidance on the weighted average cost of capital (WACC) - We do not believe that encouraging regulators to implement the UKRN guidance on the WACC is in consumers interests. The UKRN exercise sought only to bring together existing methodologies rather than explicitly seek to find the *right* methodology - i.e. one that provides returns which are neither too high nor too low. We believe the result is guidance which would mean a potentially substantial upward bias in setting allowed cost of capital at the expense of consumers. Common use of the UKRN guidance would compound this problem.

- **Recommendation** - government should set out an expectation that UKRN commissions an update to their 2018 cost of capital study under a new process which better addresses issues raised by parties who do not have commercial interest.

Consumer Duty - We welcome the proposal to review the duties on regulators, particularly as we believe that consumer protection has not always been sufficiently prioritised and more needs to be done to address this.

- **Recommendation** - a cross-sectoral examination of the role that a consumer duty (as introduced in the finance sector) could play both within the sectors that are regulated but also for the regulators themselves.

Telecoms

There is not currently a statutory advocate for telecoms consumers. Citizens Advice's consumer advocacy role in the energy market means we can combine the unique insight from our frontline advisers with in-depth knowledge of how policies affect consumers. Yet - whilst we advocate for improved consumer outcomes in parts of the telecoms sector²- without being the statutory advocate we don't have the in-depth expertise or the resources to respond in full to such a detailed and complex consultation as this.

We have set out why we need fully resourced statutory advocates in all essential markets in our response to the Department's call for evidence on the same topic. A statutory advocate for telecoms consumers would make sure consumers are heard in the boardroom, by the regulator and by the Government. It would represent the consumer voice in big infrastructure decisions such as the move from copper to Voice over IP, scrutinise the wholesale as well as the retail market and represent consumer interests as part of mergers and acquisitions.

Many of the questions in this consultation touch on precisely those technical and complex issues where a statutory advocate would add great value. It could hold Ofcom accountable for the way in which it monitors and enforces competition following the 2021 Wholesale Fixed Telecoms Market Review. It could feed into the development of a multi-sector Priority Services Register, based on the difficulties our advisers and clients have in getting touch with providers. An independent and fully resourced statutory advocate could also help review the appeals landscape and processes in the telecoms market.

² For example: [Dialling up prices: Why mobile and broadband consumers need better protections from unfair pricing practices](#), [Current impact and future potential of broadband social tariffs: a discussion paper from Citizens Advice](#), [Nowhere left to cut back. 4 million forced to cancel broadband, mobile and insurance](#), [Overcharging consumers in a cost-of-living crisis: The loyalty penalty 4 years on - Citizens Advice](#)

1. The government welcomes views on appropriate terms of reference, including scope, for such an infrastructure needs assessment, as well as views on who would be best placed to deliver this. The government welcomes any further views on the assessment.

Citizens Advice supports the creation of an infrastructure needs assessment with the aim of providing clarity and certainty of the investment that is required.

We agree that an infrastructure needs assessment should lead to efficiencies, including in land use, clarity in supply chain demands, and potentially less disruption if regulated infrastructure owners and operators can coordinate work which would be in consumers interests.

Although on a more local scale, we are already seeing the benefits of this type of coordination in practice through Collaborative Streetworks which is a part of Ofgem's price controls³ to encourage collaboration between utilities for the delivery of streetworks in Greater London. We understand the approach across utilities does deliver benefits in coordinating all utilities, including telecoms, to conduct streetworks in a more efficient and less disruptive way. However, it does also require leadership and coordination from the Greater London Authority (GLA) to deliver it. As well as an infrastructure needs assessment, coordination in delivery may also drive more efficient operations, though this would most likely require central coordination.

The concept of an infrastructure needs assessment appears to already be deployed, to a greater extent than it previously has, in the upcoming RIIO-3 price controls by Ofgem following its review of network regulation⁴. In energy, the National Energy System Operator (NESO) and Regional Energy Strategic Planners (RESPs) will be tasked with developing plans for the infrastructure needed for net zero both nationally and regionally, including a strategic spatial energy plan.

Taken together for energy this appears to go a significant way in determining what infrastructure is needed, where it is needed, and when. To avoid duplication, any cross-utilities infrastructure needs assessment will require the bringing together of these NESO outputs with requirements in water and telecoms. The National Infrastructure Commission may be an appropriate agency to perform this due to its cross-utility remit.

³ Ofgem, [RIIO-2 Final Determinations – GD Sector Annex \(REVISED\)](#)

⁴ Ofgem, [Decision on frameworks for future systems and network regulation](#), October 2023

We agree that making such an assessment cannot be accurate without a good picture of what asset health looks like. In addition to the Network Asset Risk Metric (NARM), we are supportive that Ofgem is also setting expectations on data and digitalisation by requiring networks to have a data sharing infrastructure with Ofgem in place ahead of RIIO-3 starting which we believe will help with this.

We have already seen a range of innovation projects granted funding to develop in this way⁵. It is important in achieving value for money for consumers that these activities move swiftly into business-as-usual (BAU) for network companies given Ofgem's requirements. As with all projects funded by consumers, arrangements need to ensure that learning from innovation projects is rolled out across all network companies.

We agree that both the costs and benefits of network infrastructure investment decisions should be visible in decision making. In particular this is crucial for demonstrating the different options that licensees and regulators have and how they alter the balance of costs and benefits.

Implications of transferring risk

We also agree with the overall principle that it is likely to be in consumers interests to provide useful investment predictability. Providing certainty to investors in this way removes a great deal of risk from companies where, historically, companies and shareholders have borne more responsibility and greater risk for planning the infrastructure that is required as well as delivering it efficiently.

We agree to some extent with DBT's assertion that *"setting returns in energy and water need not be a zero-sum activity. A more certain and transparent decision-making process with associated improvements in investor understanding of the decision-making process, can improve the risk-reward ratio through reducing the risk component"*.

⁵ Eg. NGT - [Collaborative Visual Data Twin - Phase 2](#); UKPN - [Trinity](#); SGN - [Gas System of the Future Digital Twin](#); ESO - [Virtual Energy System – Common Framework Demonstrator](#); SPEN - [EN-twin-e](#);

However, we must be very clear that this risk does not simply disappear with greater planning and specification of infrastructure needs. Instead, it transfers to consumers who then bear a greater financial risk on behalf of those planning the needs case for infrastructure.

We disagree that this lowering of risk for companies should result in increasing the risk-reward ratio. An appropriate risk-reward ratio would lower risks to companies and lower rewards due to the risk having transferred to consumers.

The aim should therefore be to ensure the risk and reward ratio is appropriate and fair to both consumers and investors. It cannot be fair or a just transition if private investment is de-risked in reality, while being rewarded as if the risk of investing has not changed.

We recognise that public trust in regulated companies and regulators is low as noted in the government's consultation⁶. This should not be further jeopardised through the net zero transition by setting returns at a level that is not fair and is not reflective of significant structural changes to the way that infrastructure is planned and risk is apportioned. Without public confidence, long-term certainty over the regulatory regime is damaged, impacting the investment climate. This grid investment is necessary for consumers to benefit from cheaper renewables, lowering overall energy bills, and is good for economic growth. Damaging public confidence may also affect the changes that consumers need to make which government will be reliant on to meet net zero.

The UK Government should recognise this and explicitly set out to regulators its expectations: that they should reflect both regulatory and government policy changes which increase regulatory and investment predictability, and reduce risks, when calculating the weighted average cost of capital (WACC).

Proposal 8 - implementing UKRN guidance on WACC

⁶ 1) A 2023 survey by Ofwat found that public trust in water companies was low: Ofwat, ['Trust in Water'](#), 2023

2) A 2023 survey from Which? Found that public trust in energy companies is low: Which?, ['Cold, hungry and miserable'](#): Which? Finds consumer trust in the energy industry has plummeted during the cost of living crisis', 2022

Policy proposal number 8 strongly encourages regulators to implement UKRN guidance on the weighted average cost of capital (WACC). As with the transfer of risk this is an area where we also have concern.

It is stated in the multi-criteria analysis that this proposal has low costs and medium benefits. However, in both cases the costs and benefits are in relation to regulators and the businesses and investors who are regulated. No reference is made to whether this proposal is in consumers interests.

In our view the current guidance on the WACC by UKRN, particularly on the cost of equity and cost of debt, will likely mean a potentially substantial upward bias in the UKRN's proposed approach to setting the allowed cost of capital. This will be to the benefit of company shareholders and at the cost of consumers which is not reflected in government's multi-criteria analysis.

In response to UKRN's consultation we were clear that we did not believe that the outputs of the UKRN guidance were compatible with the Government's call for the UKRN Cost of capital taskforce: *"to ensure that the setting of the periodic cost of capital must ensure value for money and provide a fair deal for all consumers, and accordingly, to ensure the general affordability of consumers' essential bills"*.

With rising interest rates and infrastructure investment on an upward trajectory to meet net zero it has become more important than ever that the approach to cost of capital provides a fair deal for consumers and seeks every opportunity to ensure consumer's bills are affordable.

However, we do not believe the UKRN exercise has determined a methodology which finds the right WACC - i.e. one that is likely to provide returns which are neither too big nor too small. Indeed, the UKRN has not attempted to do so, stating that the guidance *"brings together and consolidates existing methodologies used for setting the allowed return in regulated sectors"*⁷.

The guidance implicitly accepts the established positions of the regulated companies in finding areas of commonality between regulators. It does not acknowledge or reflect that there are also alternative positions from consumer bodies - i.e Citizens Advice - that deserve meaningful scrutiny and attention.

⁷ UKRN, [Guidance for regulators on the methodology for setting the cost of capital](#), March 2023

This is particularly disappointing as there is a clear commercial asymmetry. While companies and their shareholders have an unambiguous commercial incentive to ensure returns are as high as possible, our views are aligned with public interest and the government that returns should be neither too high nor too low.

We believe that the current methodology will likely lead to returns which are too high. In response to Ofgem's final determinations for ED2 we stated that the methodology resulted in at least £1.5 billion in excess returns going to companies using Ofgem's own cross-check figures⁸. In our previous work *Monopoly Money*⁹, we also found regulators allowed networks across essential markets to overcharge consumers by £24.1 billion over the past 15 years.

We recommended, again, that UKRN should revise its methodology for calculating cost of capital.

The government's consultation also identifies these issues citing the NAO's 2020 report on Electricity Networks, which highlights that, based on available data, energy network companies forecast 9.2% returns on average, in comparison with average FTSE returns of 5.25-5.75%¹⁰.

Deploying the same methodology across regulators therefore risks compounding the problem and pushing up costs to consumers unnecessarily across water, energy and telecoms. While consistency is beneficial in principle, the approach must be able to evolve to reflect future evidence, rather than risk precluding this.

This is an important distinction between regulatory stability and regulatory predictability. Stability risks the wrong approaches becoming further embedded while predictability accepts the need for change and evolution but with confidence of regulatory rigour and transparency. Predictability should be the priority for government and regulators.

In the consultation on the UKRN guidance we expressed serious concerns that were not addressed on three areas: the equity risk premium, the equity beta

⁸ Citizens Advice, [Our views on Ofgem Final Determinations RIIO-ED2](#), March 2023

⁹ Citizens Advice, [Monopoly Money: How consumers overpaid by billions](#), 29 May 2019

¹⁰ National Audit Office, ['Electricity Networks'](#), 2020,

and cost of debt¹¹. In all three cases our positions aligned with the UKRN's own 2018 cost of capital study but were not recognised in the guidance. On the equity risk premium and equity beta our views were also recognised in findings by the CMA in regulatory appeals but, again, were not reflected in the guidance. As an example, when addressing our concerns that an upward bias¹² exists in the approach to setting equity beta, the UKRN acknowledges that further research is required to quantify this bias. However, instead of proceeding with this research the UKRN chose instead to issue this guidance despite this noted upward bias.

Citizens Advice still recommends that UKRN should commission an update to their 2018 cost of capital study under a new process, including further research on areas where UKRN agreed it is needed¹³. We would welcome encouragement from government for this to be carried out.

The process should also better address the inherent and structural asymmetries and enable a diversity of perspectives to be independently considered, in particular taking into account the views of those who represent consumer and public interest.

We would also recommend that the multi-criteria analysis set out in the government's consultation is revised to include costs and benefits to end consumers as this may not correlate with cost and benefits to industry and regulators.

22. Do the existing concurrency powers and arrangements deter or address anti-competitive behaviour in the regulated sectors? Please explain the reasons underpinning your response.

Citizens Advice is not the statutory advocate for consumers in the telecoms sector - this role does not currently exist. However, as set out in the introduction, this is the kind of issue an independent, fully resourced advocate could add great value to.

¹¹ Citizens Advice, [response to UKRN consultation on guidance for regulators on the methodology for setting the cost of capital](#), November 2022

¹² Due to index investing

¹³ UKRN, [Appendix A: Guidance Consultation Issues and Taskforce Response](#), March 2023, page 10

23. What are your views on the creation of a single, multi-sector Priority Services Register?

We support the creation of a single, multi-sector Priority Services Register. Having one universal PSR would help to streamline the current customer experience, where service users are expected to disclose their support needs to their multiple different providers, including updating their information where necessary. The complexity of the customer journey means that many miss out on support they are entitled to. Depending on the geographical area, between 30% and 70% of people who are eligible are registered on their energy network's PSR¹⁴.

We believe that the universal PSR should be extended to all essential services sectors, including financial services, and that adoption should be mandatory for all providers. This would ensure more comprehensive support for those who need it, and a 'tell us once' principle where consumers can expect their disclosure to apply across all the services they use.

The multi-sector PSR should offer a portal for consumers, or organisations acting on their behalf, to easily disclose their support needs and update with changes to their circumstances. This should also help consumers to retain control of their data, giving them the choice over what data is shared and who they share it with.

Government leadership will be needed to achieve a cross-sector solution. Despite improvements in data sharing between sectors, progress has been slow and piecemeal. Projects (such as the Ofgem-directed data sharing between DNOs and water companies on a regional basis) have taken many years to bring to fruition. It is therefore vital that the Government takes the lead to ensure that urgent action is taken, and that its leadership can coordinate efforts across industry and mandate adoption of the multi-sector PSR. We recommend that an essential services industry taskforce be established, consisting of bodies such as National Governments, the Information Commissioner's Office, Regulators, the Financial Conduct Authority and Citizens Advice.

A move to a single, multi-sector PSR should also prompt the government to look to ensure that it offers more comprehensive support to customers in vulnerable

¹⁴ Citizens Advice, [Closing the gap: How to improve customer support in essential services](#), August 2023

circumstances. Our report 'Closing the gap' identified consumers who currently fall through the gaps in support, including those who are financially vulnerable¹⁵. For this to be realised, there will need to be real-time data sharing across the industry, building on the work of Northumbrian Water's Support for All project.

We are confident that moving to a single universal PSR is a technically achievable goal, and it has a great deal of support among stakeholders. With government leadership, and mandated adoption in all essential services, this should be in place and delivering improved consumer outcomes by the end of 2025 at the latest. As the PSTN copper telephone lines are due to be fully moved to digital in December 2025, there is a pressing need for the government to achieve this aim. A universal PSR would help to mitigate poor outcomes for consumers in the switchover, as energy providers, telecoms companies and emergency services could share their data on consumers in vulnerable circumstances (such as those relying on medical equipment) to prioritise support in the event of a blackout.

24. What are the best data sources of vulnerability that the PSR should use? Who should be able to input data?

To date, the PSR has relied on customers (or other individuals or organisations acting on their behalf) self-disclosing their support needs to their service providers. This will need to continue to be an avenue for vulnerability data collection, however companies must consider how to encourage the right conditions to maximise proactive disclosures.

This includes offering direct-to-customer systems that enable easy disclosures. The creation of thepsr.co.uk¹⁶ web portal has been a useful initiative, however it still requires the customer to click through to their different companies' websites and to disclose their data separately. It should be streamlined into a one-time disclosure process that disseminates information across different service providers, working to a 'tell us once principle'.

¹⁵ Citizens Advice, [Closing the gap: How to improve customer support in essential services](#), August 2023

¹⁶ [The PSR](#)

To help consumers disclose easily, a data dashboard should be created. This would allow for customers to easily select which data they consent to share with which companies, offering the opportunity to opt in or out at any time.

Our research found that 23% of consumers found data privacy concerns to be the biggest barrier to using smart home technology, and 60% would feel more confident if given control over what data they can share, and clear information on what companies can access¹⁷. This indicates that offering more data control would encourage more people to access support they are entitled to. Offline provision should also be considered to ensure that those who are digitally excluded do not miss out on opportunities to retain control of their data.

As well as creating easy systems and processes, companies must also ensure that their customers feel comfortable to disclose sensitive information and trust that it will be handled appropriately. Our research into the experiences of customers with mental health problems revealed that only 40% have disclosed, or would be willing to disclose, their condition in the right circumstances¹⁸. To improve disclosures, companies should commit to providing an accessible service with multiple communication channels to suit differing customer needs, and make it easier for customers to involve a trusted third party in managing their account.

Enabling comprehensive, real-time data flows will require more input than purely customer disclosure or interactions. One potential data source could be from The Data Communications Company (DCC). It holds metadata on smart meter customers, including top-up rates, top-up amounts and disconnections. This data has been used to create an accurate fuel poverty monitoring tool, currently being trialled with local authorities. If successful, how this data interacts with any financial vulnerability indicators within the PSR should be considered. The government could also employ data matching from other data sources at its disposal, including eligibility for Universal Credit and the Warm Home Discount.

¹⁷ Citizens Advice, [Smartening up: How to improve people's confidence in smart home technology](#), November 2021

¹⁸ Citizens Advice, [Counting on it - Cross sector minimum standards of support for people with mental health problems](#), March 2020

25. What vulnerabilities and services should the PSR cater for?

To date, the scope of the PSR has relied on traditional definitions of vulnerability, focusing on protected characteristics such as disability and age, and including communication needs such as requiring translation of key documents. In the past there have been differences in how service providers categorise vulnerability, though recent developments in creating common needs codes have improved consistency in identifying and categorising vulnerable customers, paving the way for some improvements in data sharing between companies.

We believe that the PSR could be extended to include a flag for financial insecurity, vulnerability and a lack of resilience to external financial shocks. This would help to address some of the current gaps in support for vulnerable customers. When the taskforce is established, one of its key actions should be to establish eligibility criteria for the PSR, making sure that it is able to meet all the support needs of its customers in vulnerable circumstances.

Many organisations would benefit from financial vulnerability data. For public sector bodies such as DWP and local authorities, this flag would reveal any gaps in benefit recipients, such as Universal Credit and housing payments. Private companies could also proactively offer payment plans to customers struggling to keep up with bills, and telecommunication providers could refer people to their social tariffs.

Real-time, dynamic data sharing could be a key enabler, due to the transient and changing nature of financial vulnerability. Service providers would need to foster trust and open communication with their customers to make sure that they are informed as needs change. The taskforce should also consider how this data can be best utilised including interactions with any financial vulnerability flag. Also, the government should consider whether this data could be used as part of the qualification criteria for future targeted energy bill support.

The PSR should also consider how to centre around people's support needs rather than their specific vulnerabilities. This could make customers more likely to disclose, as the information may be seen as less sensitive, and would lead to better support outcomes as customers would identify the support they need themselves rather than relying on their service providers to interpret them from

the information provided. This depersonalised information may also be more easily shared across relevant third-parties, helping to keep PSR data as accurate and up-to-date as possible¹⁹.

WhatWeNeed.Support is an example of an open-access tool that allows people with lived experience to input their support needs and provides *“a foundation for firms to better engage with their own disabled consumers to provide the individual service they need”*²⁰. Industry should consider how to use the tool to inform its multi-sector single PSR.

26. How can existing affordability support be better communicated to increase customer awareness?

Recent Ofgem figures show that the total debt held by domestic energy consumers has been rising since 2018 and now stands at almost £3 billion. We also estimate that over 2 million people will disconnect because they can't afford to top up by the end of winter²¹.

The need for extra support is likely to endure over the coming years, and we do not believe current policies are well designed to respond. To prevent an ongoing cycle of increasing bad debt, support for people struggling with energy bills must be improved and better targeted.

In our latest report, [Shock proof: breaking the cycle of energy crises](#), we recommend a tiered Warm Home Discount (WHD), with expanded eligibility and differential support based on energy need. In line with our long-established preference and the existing WHD scheme, this support could be provided automatically in the majority of cases in England and Wales through data matching between government and energy suppliers. This removes administrative burdens for both recipients and suppliers, and ensures people get the help they are entitled to.

Where people need to apply for support or provide information to confirm their eligibility it's important that communications are clear, targeted at those to

¹⁹ RECCo, [How can we improve the Priority Services Register for vulnerable consumers?](#), May 2023

²⁰ WhatWeNeed.Support, [A new online resource to help firms better know, understand, and support disabled consumers](#), July 2022

²¹ Citizens Advice, [Shock proof: breaking the cycle of energy crises](#), January 2024

whom they are likely to be relevant, and timely to enable people to meet scheme deadlines. Harder-to-reach groups are also likely to benefit from awareness raising targeted through other routes - like charities, local government, housing providers, healthcare etc.

People also need access to independent advice to ensure they understand the actions they need to take and can be referred to further support if necessary. We explore these issues in more detail below, based on our experience with other schemes.

Alternative bill support

Across 2021 and early 2022, the Department for Energy Security and Net Zero ran two different energy bill support schemes, with two accompanying Alternative Payment schemes. The schemes themselves have provided over £19bn in support to energy consumers²², helping domestic and non-domestic consumers through the worst of the energy price crisis. However, difficulties with the scheme communication meant that thousands of consumers struggled to access support, with many receiving payments too late, or not receiving them at all²³.

Feedback from our clients has given us insight into some of the issues that surrounded communication of the support schemes, and which demonstrate learnings for communicating affordability support:

- **Difficulty communicating the difference between the schemes:**
Four separate schemes - not including non-domestic support - had interchangeable names. These schemes were: the Energy Bill Support Scheme (EBSS); the Alternate Fuel Payment (AFP); the Alternative Fuel Payment Alternative Fund (AFP AF); and the EBSS Alternative Funding (EBSS AF). This led to widespread confusion amongst clients over which schemes they were eligible for.
- **Difficulty communicating scheme eligibility:**
Some clients found that they were either ineligible for an Alternative Fuel Payment (AFP), or that the AFP could not be paid to them due to not

²² [An international comparison of the cost of energy support packages - Office for Budget Responsibility](#) EBSS: £11.9bn; EBDS: £7.3bn; EBRs: £0.5bn.

²³ [Energy bill support: More than 700,000 households miss out - BBC News](#)

having a direct relationship with an energy supplier. These consumers should have been eligible for the AFP AF or the EBSS AF, but they were not signposted to this support either by a supplier or Government websites.

- **Lack of consideration given to how hard-to-reach communities would access the schemes:**

Both the EBSS and AFP worked by suppliers automatically passing on payments to eligible consumers. Where consumers did not have direct relationships with their supplier, or used alternative fuels, both the AFP AF and the EBSS AF were available. Both Alternative Funds required application via a Local Authority. However, this process was onerous, and not well designed for the cohorts set to benefit most from the Alternative Funding. For example, payments were often made via bank transfer, and information about the schemes were made available online. In addition, consumers were required to provide receipts for purchases made many months ago, including the name and address of a fuel supplier.

Consumers applying for these funds were more likely to:

- be uncomfortable with bank transfers or be without a bank;
- not have a fixed address;
- be digitally excluded or;
- be unable to produce proof of purchase for the required time period.

As such, many individuals who needed help from Alternative Funding found it challenging to access support due to the complicated application process.

Taking these difficulties into account, Citizens Advice has several recommendations for ensuring that existing affordability support is better communicated:

- Scheme names must be clear and easy to understand;
- Scheme administrators should be aware of other avenues of support for ineligible consumers, and have clear signposting processes in place;
- Communications for existing affordability schemes should be reassessed to ensure that accessibility and EDI considerations are fully taken into account. Affordability support schemes and any alternative schemes should be easily accessible to all consumers. This includes consumers who:

- Do not have a fixed address;
- Do not have a bank account;
- Do not have access to the internet;
- Do not have a direct relationship with an energy supplier;
- Do not have control over their energy supplier or meter, including those in Park Homes, those in HMOs, and those on sub-meters;
- Have English as a second language (EASL);
- Have any other disability such as learning difficulties.

As a service, the cost of living crisis has meant Citizens Advice has broken unwelcome records. Advice has played a crucial role in supporting people to maximise their incomes and take advantage of existing affordability schemes. However, too often unfunded referrals to third sector support can mean unmet demand, inefficient spending and ultimately unsupported consumers. Ensuring there is comprehensive funding, particularly for statutory advice, could create better customer journeys for those in vulnerable circumstances.

Small businesses

Citizens Advice is also the statutory advocate for microbusinesses. Since Government support changed to the Energy Bill Relief Scheme (EBRS) in April 2023, very few microbusinesses are now in line to receive Government support. However, recent joint research by Ofgem and Citizens Advice on microbusiness experiences during Covid-19 has provided insight into what businesses struggled with most when it came to accessing support. Findings from this report should be considered when assessing how existing affordability support is communicated. For example, the research found that:

- Energy suppliers haven't been proactive in communicating with microbusiness consumers during the pandemic, including communication on what support is available to those struggling to pay.
- Microbusiness consumers themselves have been overwhelmed by day-to-day operational priorities, as they struggle against the wider cost of living crisis. This means that they are less engaged than ever on energy, which increases the risk of bill shock and means that they are less likely to proactively seek out avenues of support.

- Where customers have contacted their supplier, they reported largely negative experiences, leaving them feeling unsupported. This may mean that they are less likely to get in touch with their supplier for more information on affordability support.
- Many microbusinesses assume incorrectly that customer protections for microbusinesses are the same as for domestic customers. This could mean that they are less likely to seek out non-domestic bill support.
- Very few microbusiness decision makers seek external support when they have a problem. Barriers for seeking support include:
 - A confidence in their own abilities to handle an issue;
 - 'Tunnel vision': a lack of awareness of existing of available support 'in the moment';
 - Time poverty: perception that the issue is not important enough to spend time resolving;
 - Sense of impotence: perception that the balance of power lies with the large energy company.

In light of these findings, the following recommendations should be implemented to ensure that existing affordability support is better communicated:

- Suppliers should be encouraged to communicate with their customers about existing affordability support, and they should have sufficient resources and processes in place to deal effectively with customer contacts.
- Affordability schemes that are specifically for non-domestic consumers should be clearly advertised, and eligibility requirements should form a major part of any communications.
- To help microbusinesses overcome barriers for seeking support, Government could consider raising the profile of existing affordability schemes directly with microbusinesses. Increased communications and promotion could increase consumer awareness of both the scheme and how it can help them.

Citizens Advice is not the statutory advocate for consumers in the telecoms sector - this role does not currently exist. However, as set out in the introduction, this is the kind of issue an independent, fully resourced advocate could add great value to.

28. What would be a suitable timeframe in which to conduct a review of these regulators' duties?

We would suggest that given the pace and scale of economic regulation decision making required to meet net zero, a review of regulators duties should seek to take no more than two years. However, minded-to decisions could be provided in advance of completion in order to give Ofgem clarity ahead of final decision making in the RIIO-3 price controls for electricity transmission, gas transmission and gas distribution. A relatively early decision on regulators duties would lay the groundwork for key future regulation.

29. What is an effective remit for economic regulators? How can regulators improve delivery of both economic and non-economic functions?

Rebalancing asymmetries

It is important that economic regulators' remit includes explicit requirements to actively recognise and rebalance the inherent asymmetries between industry parties and those representing consumers interests. For economic regulators to protect consumers interests, consumer voices must be heard throughout the regulatory processes.

As a starting point it is essential to have independent, sector-specific and statutory consumer advocates who can represent the interests of consumers. While this is the case in energy and water, it is missing for telecoms despite it being an essential service. It is also essential that statutory consumer advocates are well-resourced.

However, it is then essential that economic regulators recognise and seek to address the resource and process asymmetries that exist. Currently there is an

imbalance between the strength of the industry voice versus the consumer voice:

1. **Commercial interest.** Government and consumer bodies have a common public interest in ensuring networks are able to support GB to meet net zero targets in an efficient way and with the right returns for investors (i.e. neither too high nor too low). In contrast, investors (and companies) have an unambiguous interest in the allowed cost of capital being as high as possible.
2. **Resource asymmetry.** Companies have a considerable commercial incentive to invest resources (time, personnel, consultancy fees) into the regulatory process and have the financial ability to do so. Consumer advocates, on the other hand, are at a disadvantage with fewer financial and personnel resources to contribute to the process. For example, in the energy networks world, there were 78 working group meetings last year, each lasting 2-3 hours, to determine key elements of price controls. Citizens Advice managed to attend around a third of these whereas industry could afford to have voices at all of them. Such processes worsen asymmetries rather than addressing them.
3. **Process asymmetry.** The process also needs to better recognise these asymmetries throughout the whole regulatory process and take actions to redress the balance.

Ofgem, for example, has acknowledged these issues, stating that the network price control process results overall with a balance of risk which favours the networks²⁴. This therefore comes at increased cost and risk to consumers.

This must include appeals to the CMA where only the regulated companies have effective appeal rights meaning the appeals regime serves to worsen the situation, which is already skewed against the interests of consumers. In practice this would need other interested parties, such as statutory advocates, to have effective appeal rights which can be used without undue barriers and recognise the asymmetries in

²⁴ Ofgem, [Open Letter: Future Systems and Network Regulation](#), September 2022

resources. This issue is covered in more detail in response to question 34 and 35.

It is essential that economic regulators proactively rebalance these processes by giving appropriate weight to the submissions of consumers bodies versus investors and the companies. Namely, regulators should give special weight and consideration to the submissions of consumer bodies throughout price control processes, in reflection of their common interest with the public interest, in their limited resources, and in their (currently) limited regulatory appeal rights.

In contrast, regulators should treat the submissions of investors – via the companies and their advisers – with considerable caution, in reflection of investors' very substantial vested interest in the outcome of such regulatory decisions.

In addition, processes should also be amended to better enable the consumer voice to be heard. At present, the onus is on consumer representatives to fit into regulators processes despite the significant volumes of major changes underway in these sectors, and particularly in energy and water due to net zero.

For clarity, regulatory processes should not be changed in a way that comes at the cost of robustness as this would be a false economy.

Proposal 6 - consider greater use of comparative metrics to promote greater competition on performance between companies

We strongly welcome consultation proposal six as a key way regulators can improve delivery of economic functions.

Citizens Advice has highlighted over numerous network price controls in energy that fixed incentive targets have not been calibrated correctly by Ofgem. In practice, this has made it easier for companies to achieve or exceed that performance level in order to earn rewards funded by consumers. We consider one of the core duties in the economic regulation of monopoly companies is to emulate the incentives of an effective competitive market. However, despite this it is not uncommon to see all or most network companies in a sector earning rewards under the same performance metric.

We agree that this proposal and the greater use of comparative metrics to promote competition on performance between companies will better simulate market forces among monopoly companies.

Comparative or relative performance metrics ensure that leading companies are rewarded and poorer performing companies are penalised and incentivised to improve. It also enables dynamic targets where changing and improving performance redefines what excellent and poor performance looks like, as would occur in a competitive market. This minimises the risk that financial rewards or penalties are applied to company performance for targets that may, by the end of a price control period, no longer be relevant.

We would also encourage Ofgem to ensure that a minimum performance level is set in licence conditions to ensure that performance cannot drop below an acceptable level as Ofwat has included in the C-MeX.

We recognise that network company performance across many metrics has improved since the introduction of the RIIO-style price control. However, we believe that relative performance metrics could continue that trajectory in a fairer way for consumers while still ensuring excellent and improving performance is rewarded. It would also reduce the challenges Ofgem faces in setting targets up front, in which it often relies on average past performance as a predictor for future performance. Over successive price controls we have argued that this methodology not only fails to reflect market forces, but also underestimates the expectation that companies will outperform targets as highlighted by the National Infrastructure Commission²⁵.

Example

Analysis completed by CEPA²⁶, on behalf of Ofgem, concluded that the settlement in ED1 was overly generous to the companies. The analysis highlighted the Interruptions Incentive Scheme (IIS) in particular. The IIS is likely to have provided rewards to the companies of well over £1 billion²⁷,

²⁵ NIC, pg16 [Strategic Investment and Public Confidence](#) - National Infrastructure Commission recommended to set the allowed cost of equity (and expenditure allowances) with the expectation that network companies will outperform targets and earn rewards - known as 'aiming off'.

²⁶ CEPA, [RIIO-1 price control framework and performance review](#)

²⁷ Total rewards £1.3b (from 2015/6-2021/2) [RIIO-ED1 Annual Report Supplementary Data File](#)

largely due to targets being too easy to beat.

We note that a risk cited by companies regarding this approach is that companies expecting to be bottom or top of their sector can have limited incentive to improve further. We would suggest that this can be easily addressed by setting minimum performance levels and ensuring the strength and value of the penalty side of the incentives is strong enough to prevent this. The use of asymmetrical incentives, where the potential financial penalties are greater than rewards, may be appropriate in this case. This could reflect that the relative risks to consumers of poor or declining performance are greater than the benefits of improving performance.

We would also encourage regulators to make better use of the reputational incentive of comparing companies' performance. While Ofgem publishes annual reports of performance we have recommended to Ofgem that more could be done²⁸ to make this, and the associated rewards and penalties data publicly accessible in order to provide greater transparency and reputational incentive.

Cross-sector metrics

We have explored whether it would be possible and beneficial for any performance metrics to exist across sectors rather than just within sectors.

For example the Institute of Customer Service already assesses companies from the energy retail, energy network, water, and telecoms sectors, as well as others from across the economy in its UK Customer Satisfaction Index²⁹. This assessment blends typical customer satisfaction measures as well as complaints measures. The idea of cross-sector metrics is therefore, to some extent, already in place though it does not include all companies in the utilities sector on a consistent basis and the methodology differs to that used by regulators.

We anticipate that while it might be possible to establish common metrics such as customer satisfaction and complaints on a cross-sector basis, it would be

²⁸ Citizens Advice, [Response to Ofgem's consultation on Frameworks for future systems and network regulation](#), May 2023

²⁹ Institute of Customer Service, [UK Customer Satisfaction Index July 2023](#)

technically challenging and may bring limited benefits due to the difficulty of comparing between sectors.

Overall we recommend that regulatory focus should be on deploying comparative incentive targets within sectors. This can be practically achieved within normal price control setting processes and timelines, and would better emulate a competitive market where companies compete within their sector.

As PR24 is further ahead in its process, we recognise there may be limited scope to influence that price review. However, the RIIO-3 process for gas distribution, gas transmission and electricity transmission is at an earlier stage with sector specific methodology consultations published on the 13th December 2023.

We would strongly recommend that the Department for Business and Trade encourages the proposal for comparative performance metrics to be deployed in RIIO-3. This would ensure that the competitive benefits are delivered earlier for customers, give clarity to Ofgem and regulated companies, and support the aims of their review of network regulation to simplify, where possible, aspects of the price controls.

Resource

Citizens Advice recognises the potential for tensions between economic and non-economic duties. However, we believe this is primarily a question about suitable resourcing rather than one about prioritisation.

Given the substantial commercial interest that regulated companies have to effectively resource regulatory processes, it is essential that regulators have the resources they need to perform their economic and non-economic duties. It is a false economy for regulators to be under-resourced given the sizeable regulatory and policy challenges ahead.

In particular in areas of compliance and monitoring it is essential that regulators are resourced to identify and respond to issues. Otherwise it undermines the regulatory contract between companies, regulators and consumers that should ensure that companies comply with regulations and that swift action is taken where issues arise. Citizens Advice has experience of raising early warning signs of issues with regulators where earlier action could have prevented wider consumer detriment.

Early warning signs on forced prepayment meter installations

At the start of 2022, our *Market Meltdown*³⁰ report demonstrated substantial failings in domestic energy regulation. The existing rules around prepayment customers were broken with alarming regularity by suppliers. This includes the rules which require suppliers to offer support to customers who struggled to pay their bills. Ofgem had not at that stage opened a formal enforcement case relating to prepayment in the preceding 3 years.

Citizens Advice raised the alarm again on prepayment meters at the beginning of 2023. Our *Kept in the Dark* report³¹ showed more than 2 million people were disconnected from their energy supply at least once a month. Despite the frequency with which we raised concerns with the regulator, it still took considerable media attention and parliamentary pressure before the regulator took action.

The difficulties consumers in vulnerable situation faced when contacting their energy supplier

Citizens Advice repeatedly alerted the regulator about the difficulty consumers had in contacting their energy supplier by phone. We provided evidence to Ofgem which showed the difficulty some customers - including those in vulnerable situations - had in getting in touch with their supplier. This included Pure Planet, a supplier we eventually referred to Ofgem due to possible licence breaches. This business model clearly conflicted with Ofgem's published rules and guidance. However, no action was taken³². Pure Planet failed in 2021.

By the time Ofgem brought forward proposals to improve customer contact ease in May 2023, it had been a decade since rules requiring suppliers to be easily contactable had been introduced. Yet Ofgem hadn't taken any formal

³⁰ Citizens Advice (2022) [Market Meltdown: how regulatory failures landed us with a multi-billion pound bill](#)

³¹ Citizens Advice, [Kept in the Dark: the urgent need for action on prepayment meters](#), 11 January 2023.

³² Citizens Advice, [Access Denied: Digital disadvantage and exclusion in the energy market](#), 14 November 2022.

action in that period against suppliers who didn't provide a telephone contact line.

Monitoring and transparency of performance

At present there is significant inconsistency between the data that is published by Ofgem across the sectors it regulates where improvements would better deliver the economic regulation functions. Ofgem receives significant volumes of performance and monitoring data from regulated companies. In network regulation regulatory reporting packs (RRPs) provided by Ofgem and populated by companies contain significant volumes of data. However, there is a need for more transparency of the data that Ofgem holds and the ways in which Ofgem uses that data to monitor performance.

In the RIIO-1 price control, network performance summaries were produced annually along with supplementary data files³³. While this was welcomed, the performance summary generally only provided commentary on performance data. While occasionally some underlying rationale was provided for the performance, this is inconsistent.

Example

The regulatory reporting pack (RRP) for ED1³⁴ required companies to submit data on the number of complaints received (including breakdowns by different categories), a breakdown of customer service scores, and performance for answering telephone calls.

However, none of this data was published by Ofgem in their performance report³⁵, instead publishing only aggregated data that related to incentive metrics.

In this example, there is also an inconsistency between sectors. Complaints volumes are gathered but not published for networks whereas they are routinely published for the retail market³⁶.

³³ Eg. Ofgem, [RIIO-1 Electricity Distribution Annual Report 2019-20](#)

³⁴ Ofgem, [Appendix 2: RIIO-ED1 Electricity Distribution Reporting Pack Templates: Version 5.0](#)

³⁵ Ofgem, [RIIO-1 Electricity Distribution Annual Report 2019-20](#)

³⁶ Ofgem, [Customer service data](#)

Given the richness of the data that is required by Ofgem in its RRP's and the effort to collect and submit it by companies, we believe Ofgem should also publish this data in a usable format to provide better insight into performance beyond headline aggregated or averaged scores.

We would also note that while RIIO-2 started in 2021 for transmission and gas distribution companies, we are unable to find the equivalent annual performance reports for those sectors. It is important that there is consistency and transparency of data.

Non-economic functions - advice delivery

It is important that the energy market operates in a way that recognises and supports customers in vulnerable circumstances. In many instances this will involve networks ensuring customers are supported during interruptions of either electricity or gas, when existing circumstances could make consumers more vulnerable. It is also important in the day to day operations and contacts that network companies and energy suppliers might have with consumers. However, the support provided by network companies has grown over a number of price controls and now includes the provision of funding for fuel poverty advice and support.

In the current gas distribution and electricity distribution price controls (GD2 and ED2) the level of funding provided by the price controls to energy networks has increased significantly to now provide approximately £240million over a 5 year period.

GD2 makes up 70% of this potential spend (£170million). By stark contrast, in the previous gas price control, GD1, funding via financial rewards to gas distribution networks for 'social' output' activities in the Discretionary Reward Scheme totalled £2.2million for all four companies across the 8 year price control³⁷.

³⁷ Ofgem Discretionary Reward Scheme Decisions, [2013-15](#), [2015-18](#), [2018-21](#)

Citizens Advice has expressed concerns to network companies and Ofgem about the gaps and overlaps³⁸ that exist in advice funding, which may not be in consumers or advice providers' interests overall.

In particular, hundreds of millions of pounds of funding is being provided via Ofgem and price controls but without a clear overarching advice strategy, and without coherent, cross-sector measurement and data gathering to ensure that lessons can be learned from advice.

Funding via price controls is also inherently regressive. Those who spend larger proportions of their income on energy contribute relatively more to this funding, despite potentially being the most likely to need support and advice. There is therefore a clear issue of fairness by using energy network price controls as such a significant route for energy advice funding.

For clarity, we see significant value in energy networks having effective referral partnerships which enable them to identify the needs of customers and make referrals to advice providers.

Citizens Advice is calling for an energy advice strategy to tackle gaps and overlaps in the advice sector as a whole. This should be coordinated by both the government and the energy regulator, Ofgem. In the current system, too many unfunded and inefficient referrals happen without a clear understanding of where advice capacity is across the country. Without consistent data and quality management, advice can vary without any understanding of impact. Up to hundreds of millions of pounds is invested without proper planning or scrutiny, whilst statutory advice provision is approximately £3m per year. This is despite the fact that data from the statutory advice provider is used by policy-makers and regulators on a regular basis to inform key decisions.

As the market changes with affordability and energy debt becoming a much more significant issue, more investment is needed in our statutory services to support people to be able to afford their energy bills and implement longer term solutions such as accessing energy efficiency schemes. As we begin to retrofit homes at pace, this advice area will also need to be considered and planned for appropriately.

³⁸ Citizens Advice, [Tackling gaps and overlaps: addressing the energy advice challenge](#), March 2022

30. The government’s provisional view is that regulators’ economic core duties are: Fostering economic growth; Ensuring effective competition; Delivering Net Zero and protecting the environment; Protecting consumers. Are these the correct set of core economic duties regulators should be focused on? If not, what should regulator duties be focused on?

We agree that these core duties are broadly appropriate for the range of sectors outlined in this consultation. However, we do have concern about how these are put into practice and the risks that the role to protect consumers is more easily de-prioritised.

As we outline in our response to question 31 below, we have seen the consequences of regulatory focus on a limited section of their duties (such as prioritising competition in the retail market) at the cost of protecting consumers). While recognising that economic regulators will need the flexibility given by such a range of duties, and that the duties themselves are intended to cover a wide range of distinct sectors, we believe that consumer protection has not always been sufficiently prioritised and more needs to be done to address this.

We have been calling for some time for regulators to incorporate consumer duties for regulated companies and see the economic sectors covered in this consultation as suitable candidates. The introduction of a consumer duty in financial services has set a clear benchmark for the benefits of prioritising consumer protection within economic regulation.

We highly recommend a cross-sectoral examination of the role that a consumer duty could play both within the sectors that are regulated but also for the regulators themselves. Consumer outcomes-based regulation could better focus the minds throughout economic regulation on ensuring decisions and actions deliver good outcomes for consumers.

The introduction of consumer duties would not preclude the presence of the other regulatory duties, but we do think it could rebalance the duties to ensure that a higher priority is placed on the consumer protection aspect.

Citizens Advice is not the statutory advocate for consumers in the telecoms sector - this role does not currently exist. However, as set out in the introduction, this is the kind of issue an independent, fully resourced advocate could add great value to.

31. What are the key benefits of this approach? What might any risks or unintended consequences be?

A range of core regulatory duties has the virtue of simplicity and flexibility, but can have unintended consequences. The balance within and between some duties, such as between encouraging competition and consumer protection, can mean that some regulators do not strike the appropriate balance. Choices can be made which can harm consumers in the interests of enhancing other objectives.

In the domestic energy market, we have seen a number of examples of Ofgem choosing to prioritise competition over consumer protection.

At the start of 2022, our Market Meltdown³⁹ report demonstrated substantial failings in domestic energy regulation. The existing rules around prepayment customers were broken with alarming regularity by suppliers. This includes the rules which require suppliers to offer support to customers who struggled to pay their bills. Ofgem had not at that stage opened a formal enforcement case relating to prepayment in the preceding 3 years.

Citizens Advice raised the alarm again on prepayment meters at the beginning of 2023. Our Kept in the Dark report⁴⁰ showed more than 2 million people were disconnected from their energy supply at least once a month. Despite the frequency with which we raised concerns with the regulator, it still took considerable media attention and parliamentary pressure to shame the regulator into action.

Citizens Advice repeatedly alerted the regulator about the difficulty consumers had in contacting their energy supplier by phone. We provided evidence to

³⁹ Citizens Advice (2022) [Market Meltdown: how regulatory failures landed us with a multi-billion pound bill](#)

⁴⁰ Citizens Advice, [Kept in the Dark: the urgent need for action on prepayment meters](#), January 2023.

Ofgem which showed the difficulty some customers - including those in vulnerable situations - had in getting in touch with their supplier. This included Pure Planet, a supplier we eventually referred to Ofgem due to possible licence breaches. This business model clearly conflicted with Ofgem's published rules and guidance. However, no action was taken.⁴¹ Pure Planet failed in 2021.

By the time Ofgem brought forward proposals to improve customer contact ease in May 2023, it had been a decade since rules requiring suppliers to be easily contactable had been introduced. Yet Ofgem hadn't taken any formal action in that period against suppliers who didn't provide a telephone contact line.

Ofgem's approach during the periods in question was characterised by aiming to increase competition in the domestic energy market, with a lack of attention paid to compliance or consumer protection as a result.

It is important that in setting out duties it is clear to regulators that consumer protection and the prevention of harm and detriment, particularly among consumers in vulnerable circumstances, is not a duty which can be traded off against others in this way. We think that consumer duties would go some distance to ensuring that these failures are not repeated in energy or other sectors.

Network charging tensions

Citizens Advice recognises that placing duties on regulators should focus regulatory efforts on delivering the right outcomes which are overall in consumers interests, even where this may require complex trade-offs.

However, we think it is important to highlight that there can often be challenging tensions between duties where regulators may not have all the tools they need to resolve them effectively.

Network charging is a good example of this. Charges to recover the costs of building, operating and maintaining electricity and gas networks generally aim to be cost reflective. For example in electricity transmission charging, the aim is

⁴¹ Citizens Advice, [Access Denied: Digital disadvantage and exclusion in the energy market](#), 14 November 2022.

that users of the network who prompt further investment to be required should face the costs associated with this, in particular to encourage connections in places which do not require further investment, minimising overall system costs.

This is a long held regulatory principle which we agree with. The alternative is that costs are socialised - i.e. those who do not necessarily cause further network investment pick up a greater proportion of the costs prompted by other parties. There is therefore a fairness issue, particularly as placing any charges on energy bills is inherently regressive with those who pay a larger proportion of their income on energy bills picking up a proportionally larger share of the cost.

However, this does not necessarily mean that charges will be affordable or compatible with other duties. For example, energy intensive industries (EIs) face significant network charges because of the principle that charges should be cost reflective. However, the affordability of these charges has been recognised as problematic by the Government through the introduction of the Network Charging Compensation Scheme.

Ofgem as the regulator has had a clear tension in its duties on an issue like this for many years. We agree that it was therefore necessary for government to intervene. However, the method of funding the compensation is via a levy placed on energy suppliers. This means consumers are regressively funding this support through their energy bills.

Given this is primarily a policy intervention by government we do not think it is appropriate or fair that charges of this nature are funded by energy bills and should instead be funded through general taxation. However, this example serves to demonstrate that the correct regulatory principles can be in conflict with governmental policy aims as well as with other duties.

Citizens Advice is not the statutory advocate for consumers in the telecoms sector. As set out in the introduction, this is the kind of issue an independent, fully resourced advocate could add great value to.

32. The government welcomes your views on enabling the CMA to have the additional flexibility to appoint larger groups to hear non-price control water appeals and energy appeals. What might be the downsides of this approach? Do you have any evidence of alternative models e.g., international comparators?

Citizens Advice agrees that the CMA should be enabled to have flexibility when appointing the panels to determine appeals. This would enable the CMA to ensure that appointments reflect the complexity of appeals.

However, we would encourage the government to go further and ensure that appeal panels include a dedicated panel member who has suitable background and experience in the representation of consumer interests.

Citizens Advice has concerns that energy appeals have become a routine regulatory game that is played by networks at very little financial risk to the appealing companies, relative to the size of the prize that is the subject of the appeal. Our experience of appeal hearings is that little regard is paid to two fundamental questions:

- whether there is evidence that companies are underfunded in a real sense i.e. will be allowed to recover less revenue than required to fulfil their business plans, and;
- whether the arguments presented by companies lead to an overall outcome that is in the interests of consumers who, in most cases, would be funding any additional costs.

We agree that appeals are an important aspect of the regulatory regime to give investors confidence. However, this must work both ways. The appeals regime should also give equal confidence to end consumers that discussions, processes and decisions will have proper regard to consumers' interests. Whilst allowing additional parties to raise issues to the CMA as part of appeals is a key part of achieving this, it is not a substitute for ensuring consumer interest is rooted in appeals to begin with.

We consider that a dedicated panel member, would represent an improvement that better meets the aims set out by the Government *"on achieving an appeals*

*system which delivers the best outcome for consumers and the wider public interest [and] appropriately checks and balances the decisions of sector regulators*⁴².

33. What are the risks to consider before giving CMA power to directly extend deadlines in energy and water appeals? What opportunities do you feel this proposal may create? Do you have any evidence regarding this proposal that the government should consider?

We support greater consistency between the CMA and the Competition Appeal Tribunal (CAT). The CMA should be given powers to grant extensions to appeals where it is deemed necessary to ensure that the appropriate amount of time, within current legislated limits, is provided to ensure as robust a process as possible can be carried out.

34. In what other ways can the consumer voice be represented during energy, water and telecoms appeals?

For appeals in energy, as recommended in response to question 32, we believe that requiring a dedicated panel member with suitable background and experience in the representation of consumer interests would add further consumer representation. We would expect this to also add significant value in appeals in other sectors.

In addition to this, there is clear evidence that the current process for energy appeals does not work in the interests of consumers and that reform is needed.

This is for three main reasons:

1. Cherry-picking

Companies are able to ‘cherry-pick’ which issues to appeal upon, whereas parties with contrary interests, i.e. consumers, do not have the same opportunity, nor the resources, to appeal. This leads to a highly asymmetric process as only those matters where an appeal might be favourable to the

⁴² Department for Business and Trade and Department for Business, Energy & Industrial Strategy, [Economic Regulation Policy paper](#), p. 19 and 21.

networks get brought to the CMA. This has the potential to lead to an overall outcome even more skewed against consumer interests.

The view is acknowledged by government in the consultation where it's described as a *"behaviour... [which] can occur during the appeals process"*⁴³. We would stress, however, that cherry-picking is not an issue, in reality, over which network companies have optionality.

It is inherent to the appeals regime that network companies have an explicit incentive to only choose to pursue appeals on issues over which they believe they can seek potential financial benefits which outweigh the predictable process costs. On the other hand there is a clear disincentive for network companies to bring forward appeals on decisions which are generous in their favour and to then seek less revenue. We believe it is important that this fundamental issue is recognised by government and addressed ahead of the substantial investment that will be required through price controls to support net zero.

To illustrate the extent of this, we have examined the regulatory appeals related to recent RIIO price controls.

In electricity distribution, Northern Powergrid appealed their RIIO1 settlement (RIIO-ED1).

- Analysis completed by CEPA⁴⁴, on behalf of Ofgem, concluded that this settlement was overly generous to the companies. The analysis highlighted the Interruptions Incentive Scheme (IIS) in particular. The IIS is likely to have provided rewards to the companies of well over £1bn⁴⁵, largely due to targets being too easy to beat. This was despite Ofgem being warned of this issue⁴⁶ by a non-network stakeholder consistently throughout the consultation.
- Northern Powergrid benefited from IIS by around £200m⁴⁷. NPg was nevertheless able to successfully appeal a different aspect of the

⁴³ [Smarter Regulation: Strengthening the economic regulation of the energy, water and telecoms sectors: As regulated by Ofgem, Ofwat and Ofcom](#), page 62

⁴⁴ CEPA, [RIIO-1 price control framework and performance review](#)

⁴⁵ Total rewards £1.3b (from 2015/6-2021/2) [RIIO-ED1 Annual Report Supplementary Data File](#)

⁴⁶ For example, British Gas [response](#) to RIIO ED1 Draft Determinations

⁴⁷ Total rewards £196m (from 2015/6-2021/2) [RIIO-ED1 Annual Report Supplementary Data File](#)

settlement and gain an extra £30m⁴⁸ in allowances, demonstrating that appeals can be expected to make already generous packages more generous.

In another example, for gas distribution, all the companies successfully appealed the 0.25% outperformance wedge proposed in the most recent price control settlement (RIIO-GD2), which we estimate is worth around £400m in increased revenue⁴⁹. The outperformance wedge is a downward adjustment to the allowed cost of equity, to adjust for the expectation that companies will be able to systematically beat targets and earn incentive rewards. The companies are currently outperforming by around 2%⁵⁰, again demonstrating that appeals serve to make the balance between consumers and shareholders worse.

2. The appeals process casts a long shadow over processes and decisions

The appeals process, and the likelihood that only the regulated companies will appeal, has a detrimental effect on the decision making process within the price control itself.

We believe that Ofgem actively seeks to reduce the risk of successful appeals to the CMA. In practice this means that Ofgem will tend to be generous to the companies as they are the parties most likely to appeal. There is clear evidence of this from the most recent regulatory determination (RIIO-ED2):

- Ofgem chose to maintain virtually all the aspects of the approach to setting the cost of capital as for the previous price control (RIIO-2), telling investors the approach *“remains consistent in the position that we defended through the CMA appeals”*⁵¹. However this approach was previously part of a package that included the outperformance wedge mentioned above. To continue with the same approach but remove the outperformance wedge was incoherent and knowingly generous.

⁴⁸ Adjustment to the totex allowance of £31.5 million, [CMA Final Determination](#)

⁴⁹ Based upon the impact of changes to the allowed return on equity in [Ofgem's Impact Assessment](#)

⁵⁰ Return on regulatory equity of 6.7% for 2021/2 compared to 4.6% baseline. [Ofgem data file](#).

⁵¹ [Ofgem Investor Call](#)

- o Indeed, in its response to the CMA's provisional decision to rule out the outperformance wedge for gas distribution (GD2), Ofgem stated that it may have set a lower allowed return on equity in the absence of the outperformance wedge⁵². However, in practice, when faced with the same decisions for electricity distribution it did not explore different approaches.
- o Ofgem set several elements of the price control that it knew to be generous, and did not act when Citizens Advice highlighted these in our consultation responses⁵³.

Example

The customer satisfaction incentive in ED1 has been worth over £293million in rewards for electricity distribution network companies⁵⁴, paid for by customers. It is worth noting that funding for staff and IT are already provided to DNOs as baseline funding by Ofgem - i.e. consumers pay once to enable customer service to be provided and then a second time through any rewards which are earned. Rewards were earned by all 14 licensees in every year of ED1 except for one company in one year⁵⁵.

In response to Ofgem's draft determinations for ED2 we highlighted the issue that using 4 year average performance is not reflective of the likelihood of outperformance and was generous. We also stated it would lead to rewards for some companies in the first year of ED2 for a level of performance that has not actually improved and for which companies will have already earned rewards in ED1. Instead we suggested rolling or relative performance targets and alternative static targets that differ across the three metrics in order to better reflect current performance.

Although some changes were made to the methodology, Ofgem

⁵² Para 6.186, [CMA Final Determinations 2021 Energy Licence Modification appeals](#)

⁵³ Citizens Advice, [Response to the Ofgem RIIO-ED2 Draft Determinations consultation](#), August 2022, a summary of areas where we believed Ofgem was too generous are also included in our [response to the Finance Annex \(Executive Summary page 3\)](#). Highlighted again in our [response to the ED2 Final Determinations](#), March 2023

⁵⁴ Ofgem, [RIIO-ED1 Annual Report 2021-22 Supplementary Data File](#)

⁵⁵ Excluding 2022/23 for which data is not available. ENWL was penalised £710,000 in 2015/16.

chose to use a single static target across the 3 different metrics that would lead to 12 out of 14 and 5 out of 14 licensees earning rewards for the general enquiries and connections metrics respectively, even if performance is unchanged from 21/22 performance.

It should also be noted that Ofgem has taken no account of the National Infrastructure Commission's recommendation to set the allowed cost of equity (and expenditure allowances) with the expectation that network companies will outperform targets and earn rewards⁵⁶ - known as 'aiming off'.

- Ofgem failed to act on its own cross-checks that showed the cost of capital it was setting was too high, preferring to use these as evidence that the cost of capital was instead not too low⁵⁷. No arguments were put forward as to how Ofgem had confidence that the cost of capital was not too high, demonstrating another imbalance that favours companies and their shareholders at the cost of consumers. Using Ofgem cross-checks as a guide we estimate this to have led to additional costs to energy consumers of up to £1.5bn⁵⁸.

3. A low risk game

'Cherry picking' leads to appealing being a 'free hit' as it means the only risk companies are taking when appealing is the costs of running appeals (including costs awards). This will be relatively small, and predictable, when compared to the potential rewards from a successful, or even partially successful, appeal. Companies also only need to succeed in minor aspects of an appeal to get back more than the costs of the appeal.

Even if an appeal has a low probability of success, the upside for network companies by ensuring the regulator *believes* an appeal is likely when making the original decision will make appealing highly attractive. This is how

⁵⁶ NIC, pg16 [Strategic Investment and Public Confidence](#)

⁵⁷ *In our view, the cross-check evidence does not support the DNOs' view that our CAPM mid-point is too low. If anything, the cross-check evidence is more consistent with the view that our CAPM mid-point is higher than the true cost of equity*

⁵⁸ Citizens Advice, [Response to the Ofgem RIIO-ED2 Draft Determinations consultation](#)

regulatory appeals have become a routine and low-risk game that is played by network companies. The effects of the appeals regime are felt throughout the whole regulatory price control process, increasing these unseen costs to consumers.

The reform that is needed

It is essential for consumers that the regulatory and appeal regime is reformed. As the scale of investment required for net zero increases, so will the costs to consumers of a regime that is unbalanced and does not suitably reflect consumer interest.

There are two key outcomes this economic regulation review should deliver that are important for consumers:

- Given the structural asymmetries we have outlined above, we believe that the regulatory process (including appeals) should be designed to rebalance this. Instead, the appeals process currently increases the overall asymmetry in favour of the companies and to the detriment of consumers.
- It is essential to reform appeals to reduce the incentive that exists to appeal regardless of the merits of the proposed case. The appeals process needs to be reformed to introduce a downside (beyond costs) to appealing. As described, there is currently an incentive for running highly speculative appeals. Appeal rights for non-network parties must also be *effective* appeal rights - ie that there are not undue barriers to using them.

The issue of appeal rights not being effective for non-network parties, and particularly consumer bodies, is explicitly highlighted by the government in its consultation:

*“Consumer bodies often do not appeal regulators’ decisions because they are concerned about the **cost implications of losing, which could reach millions of pounds**. Where appellants have lost the appeal, they may be required to pay the CMA’s costs accrued from reviewing the original regulator’s decision and may also have to pay the costs of the regulator in defending its decision against the appeal.*”

*This is a risk for any organisation to consider, but **it is often unaffordable for consumer groups to submit their own appeal** and so they sometimes intervene on open cases instead". (emphasis added)⁵⁹*

However, the consultation does not contain any proposals that seek to address this issue, instead focussing on changing the regime for interveners instead, which we give our views on in response to Q35 below. This leaves the fundamental imbalance in regulatory appeals, between network companies and consumer bodies, unaddressed.

The approach this economic regulation review should take to improving regulatory appeals in energy is to seek to identify what is the *right* approach to regulatory appeals. Instead the consultation currently appears to have limited the review to comparing the approach taken in water with the approach in energy (with an alternative to rely on judicial review), and concluded the energy approach is preferable.

We believe this lacks ambition and is not satisfactory or proportionate to the scale of potential consumer detriment. Instead, the different approaches should be broken down into component parts (e.g. standard of review) and best practice in each element evaluated. These can then be packaged together. Whilst the overall result may be novel, we believe that this will be consistent with regulatory certainty and predictability as it will be built on familiar and existing ideas.

Potential solutions already exist

To deliver an improved regulatory appeals process in energy the solution should maintain the standard of review currently in energy. We agree it is not appropriate or efficient for the CMA to perform a full redetermination. It should also include the process used in water to identify which issues the CMA will consider. In the most recent water appeals, the CMA consulted stakeholders on which issues should be prioritised and deprioritised⁶⁰.

⁵⁹ [Smarter Regulation: Strengthening the economic regulation of the energy, water and telecoms sectors: As regulated by Ofgem, Ofwat and Ofcom](#), page 60

⁶⁰ [CMA approach to water redeterminations](#)

In practice, this can be achieved in a number of different ways:

- Use the water process as the starting point: once a company triggers the process, the CMA prioritises (and deprioritises) issues to arrive at what it takes forward. This will be done through a consultation, including with consumer advocates, that allows other stakeholders to raise issues. Then apply the energy standard of review (i.e. is the regulator 'wrong') rather than the CMA making a redetermination.
- Use the energy process as the starting point, but allow intervening parties to suggest other issues that the CMA should include in its consideration.

This directly addresses the issue of cherry-picking, and appealing being a free hit, as it allows the CMA to consider a more balanced set of issues. This, in turn, reduces the 'long shadow' cast by the current appeals process by reducing the risk of a successful appeal (mainly by introducing a potential downside to appealing).

When appeal rights are not *effective* appeal rights

An alternative would be to give the statutory energy advocate effective appeal rights. In order to consider exercising its current appeal rights, Citizens Advice would need certainty over the costs of running an appeal. Potentially, our own costs could be significant but at least this can be managed and can be considered as part of funding discussions. However, other awarded costs have the potential to be significantly higher and pose significant risk.

Under current arrangements, an appeal by Citizens Advice which was in the public interest but does not succeed could result in the CMA's costs and the respondent's (Ofgem) costs awarded against it. British Gas were ordered to pay around £480k⁶¹ of Ofgem's appeal costs and a share of the CMA's costs following its price control appeal in 2015. Citizens Advice is unlikely to be in a position to accept that risk. It is therefore an extremely high barrier for Citizens Advice to exercise its existing appeal rights, in stark contrast to the ability for network companies to bring appeals.

⁶¹ 60% of Ofgem's costs Para 9.32 [CMA BGT Final Determinations](#)

The CMA has the ability to not award other parties' costs, even if Citizens Advice lost its appeal, if it believes the appeal was in the public interest. It is obliged to recover its own costs however.

To make these appeals rights effective, we would require confirmation (when the CMA grants permission to appeal) that the CMA views the appeal as being in the public interest and would not award costs against us. The CMA would need the ability not to award its costs and for these to be found from a different source - potentially in line with its core funding..

Citizens Advice is not the statutory advocate for consumers in the telecoms sector - this role does not currently exist. However, as set out in the introduction, this is the kind of issue an independent, fully resourced advocate could add great value to.

35. Are there any concerns or opportunities you foresee in allowing interveners, who have acted on behalf of consumers interests, to recover reasonable costs incurred alongside the body hearing the appeals costs? How may this impact cases and legal practice in this sector? What would be useful to include in the guidance for the appeals body to deliver this mechanism?

This is a welcome proposal but would be more effective if implemented alongside some of the options outlined in our answer to Q34. We believe changes to costs for public interest interveners will mitigate, but not eliminate, the risk that the outcome of appeals brought by network companies are detrimental to consumers.

We also do not believe the proposal will have a significant impact on the key issue: that the current appeals process casts a long shadow on price control processes and regulatory decision making. This is because it does not address the two key issues:

1. That only the network companies can raise issues for the CMA to consider under appeals and;
2. Network companies can cherry-pick issues to appeal.

We believe it is essential to the interests of consumers and the fair delivery of net zero at lowest cost that these two issues are addressed as suggested in response to Q34. This should be done alongside the proposals for interveners.

To meet the government's aim of greater consumer evidence in appeals, some further changes would be required to the proposal.

Intervener improvements

To be effective, the intervener would require a high degree of confidence that their costs will be included as part of the CMA's cost recovery. We are not sure that guidance can provide that.

Instead, we would suggest a 2-stage process could be introduced. This will also address other barriers that exist to making effective interventions.

Currently, intervenors are expected to submit their evidence as part of seeking permission to intervene. This means potential intervenors spend time and money preparing evidence before knowing whether they will even be accepted as intervenors.

The process also requires potential intervenors to submit evidence when they only have access to the notice of appeal and do not have access to all the supporting information (witness statements, consultant reports etc.).

Alternatively, skeleton arguments could be provided by the appellant when seeking to appeal, with the full intervention to be submitted later in the process after reviewing the full suite of appeal documents. This would allow potential intervenors to proceed at limited risk when seeking permission to intervene and then have confidence over costs when committing more resources to the full intervention submission (assuming permission is granted and the submission is in line with what is outlined in the skeleton arguments provided). Guidance will still be required, particularly to ensure skeleton arguments provide sufficient detail for the CMA.

36. What unintended consequences or risks should the government be aware of when considering making this amendment to code modification appeals?

Overall we support the proposal to align the relevant energy code modification appeals legislation with energy licence modification legislation. We support the CMA being able to recover costs in a more fair and proportionate way from appellants and the regulator in the case that an appeal is only partially successful.

37. What are the costs and benefits of moving the regime from a redetermination to an appeals standard? Do you have any evidence for this, for example, from other regulated sectors or international examples of appeals regimes?

Firstly we would reiterate part of our response to Q34. Moving from one regime to another risks presenting an unnecessarily binary choice. The approach this economic regulation review should take to improving regulatory appeals in energy and water is to seek to identify what is the *right* approach to regulatory appeals. Instead the consultation currently appears to have limited the review to comparing the approach taken in water with the approach in energy.

We believe this lacks ambition and is not satisfactory or proportionate to the scale of potential consumer detriment. Instead, the different approaches should be broken down into component parts (e.g. standard of review) and best practice in each element evaluated. These can then be packaged together. Whilst the overall result may be novel, we believe that this will be consistent with regulatory certainty and predictability as it will be built on familiar and existing ideas.

The significant cost of moving water appeals from a redetermination to an appeals standard is the widening of the asymmetries it will create. Without the reform we have suggested in response to Q34, water companies would be able to cherry-pick the components of an Ofwat decision to appeal.

As we have also set out, the effect of such a regime is not contained to the appeals themselves. It casts a long shadow over the decisions and decision making processes within price controls where we believe there is evidence that

decisions are knowingly generous to companies in order to avoid appeals. There is significant risk the same would occur in the water sector, to the detriment of consumers, at a time when investment in water, like energy, must increase.

38. What risks of making this change should the government be aware of?

Please see answer to Question 37.

39. What information do you consider necessary for Ofcom to include in its decision documents?

Citizens Advice is not the statutory advocate for consumers in the telecoms sector - this role does not currently exist. However, as set out in the introduction, this is the kind of issue an independent, fully resourced advocate could add great value to.

Annex - Responses to proposals not covered by consultation questions

Proposal 6 - consider greater use of comparative metrics to promote greater competition on performance between companies

We strongly welcome consultation proposal six as a key way regulators can improve delivery of economic functions.

Citizens Advice has highlighted over numerous network price controls in energy that fixed incentive targets have not been calibrated correctly by Ofgem. In practice, this has made it easier for companies to achieve or exceed that performance level in order to earn rewards funded by consumers. We consider one of the core duties in the economic regulation of monopoly companies is to emulate the incentives of an effective competitive market. However, despite this it is not uncommon to see all or most network companies in a sector earning rewards under the same performance metric.

We agree that this proposal and the greater use of comparative metrics to promote competition on performance between companies will better simulate market forces among monopoly companies.

Comparative or relative performance metrics ensure that leading companies are rewarded and poorer performing companies are penalised and incentivised to improve. It also enables dynamic targets where changing and improving performance redefines what excellent and poor performance looks like, as would occur in a competitive market. This minimises the risk that financial rewards or penalties are applied to company performance for targets that may, by the end of a price control period, no longer be relevant.

We would also encourage Ofgem to ensure that a minimum performance level is set in licence conditions to ensure that performance cannot drop below an acceptable level as Ofwat has included in the C-MeX.

We recognise that network company performance across many metrics has improved since the introduction of the RIIO-style price control. However, we believe that relative performance metrics could continue that trajectory in a

fairer way for consumers while still ensuring excellent and improving performance is rewarded. It would also reduce the challenges Ofgem faces in setting targets up front, in which it often relies on average past performance as a predictor for future performance. Over successive price controls we have argued that this methodology not only fails to reflect market forces, but also underestimates the expectation that companies will outperform targets as highlighted by the National Infrastructure Commission⁶².

Example

Analysis completed by CEPA⁶³, on behalf of Ofgem, concluded that the settlement in ED1 was overly generous to the companies. The analysis highlighted the Interruptions Incentive Scheme (IIS) in particular. The IIS is likely to have provided rewards to the companies of well over £1 billion⁶⁴, largely due to targets being too easy to beat.

We note that a risk cited by companies regarding this approach is that companies expecting to be bottom or top of their sector can have limited incentive to improve further. We would suggest that this can be easily addressed by setting minimum performance levels and ensuring the strength and value of the penalty side of the incentives is strong enough to prevent this. The use of asymmetrical incentives, where the potential financial penalties are greater than rewards, may be appropriate in this case. This could reflect that the relative risks to consumers of poor or declining performance are greater than the benefits of improving performance.

We would also encourage regulators to make better use of the reputational incentive of comparing companies' performance. While Ofgem publishes annual reports of performance we have recommended to Ofgem that more could be done⁶⁵ to make this, and the associated rewards and penalties data publicly accessible in order to provide greater transparency and reputational incentive.

⁶² NIC, pg16 [Strategic Investment and Public Confidence](#) - National Infrastructure Commission recommended to set the allowed cost of equity (and expenditure allowances) with the expectation that network companies will outperform targets and earn rewards - known as 'aiming off'.

⁶³ CEPA, [RIIO-1 price control framework and performance review](#)

⁶⁴ Total rewards £1.3b (from 2015/6-2021/2) [RIIO-ED1 Annual Report Supplementary Data File](#)

⁶⁵ Citizens Advice, [Response to Ofgem's consultation on Frameworks for future systems and network regulation](#), May 2023

Cross-sector metrics

We have explored whether it would be possible and beneficial for any performance metrics to exist across sectors rather than just within sectors.

For example the Institute of Customer Service already assesses companies from the energy retail, energy network, water, and telecoms sectors, as well as others from across the economy in its UK Customer Satisfaction Index⁶⁶. This assessment blends typical customer satisfaction measures as well as complaints measures. The idea of cross-sector metrics is therefore, to some extent, already in place though it does not include all companies in the utilities sector on a consistent basis and the methodology differs to that used by regulators.

We anticipate that while it might be possible to establish common metrics such as customer satisfaction and complaints on a cross-sector basis, it would be technically challenging and may bring limited benefits due to the difficulty of comparing between sectors.

Overall we recommend that regulatory focus should be on deploying comparative incentive targets within sectors. This can be practically achieved within normal price control setting processes and timelines, and would better emulate a competitive market where companies compete within their sector.

As PR24 is further ahead in its process, we recognise there may be limited scope to influence that price review. However, the RIIO-3 process for gas distribution, gas transmission and electricity transmission is at an earlier stage with sector specific methodology consultations published on the 13th December 2023.

We would strongly recommend that the Department for Business and Trade encourages the proposal for comparative performance metrics to be deployed in RIIO-3. This would ensure that the competitive benefits are delivered earlier for customers, give clarity to Ofgem and regulated companies, and support the aims of their review of network regulation to simplify, where possible, aspects of the price controls.

⁶⁶ Institute of Customer Service, [UK Customer Satisfaction Index July 2023](#)

Proposal 8 - implementing UKRN guidance on WACC

Policy proposal number 8 strongly encourages regulators to implement UKRN guidance on the weighted average cost of capital (WACC). As with the transfer of risk this is an area where we also have concern.

It is stated in the multi-criteria analysis that this proposal has low costs and medium benefits. However, in both cases the costs and benefits are in relation to regulators and the businesses and investors who are regulated. No reference is made to whether this proposal is in consumers interests.

In our view the current guidance on the WACC by UKRN, particularly on the cost of equity and cost of debt, will likely mean a potentially substantial upward bias in the UKRN's proposed approach to setting the allowed cost of capital. This will be to the benefit of company shareholders and at the cost of consumers which is not reflected in government's multi-criteria analysis.

In response to UKRN's consultation we were clear that we did not believe that the outputs of the UKRN guidance were compatible with the Government's call for the UKRN Cost of capital taskforce: *"to ensure that the setting of the periodic cost of capital must ensure value for money and provide a fair deal for all consumers, and accordingly, to ensure the general affordability of consumers' essential bills"*.

With rising interest rates and infrastructure investment on an upward trajectory to meet net zero it has become more important than ever that the approach to cost of capital provides a fair deal for consumers and seeks every opportunity to ensure consumer's bills are affordable.

However, we do not believe the UKRN exercise has determined a methodology which finds the right WACC - i.e. one that is likely to provide returns which are neither too big nor too small. Indeed, the UKRN has not attempted to do so, stating that the guidance *"brings together and consolidates existing methodologies used for setting the allowed return in regulated sectors"*⁶⁷.

The guidance implicitly accepts the established positions of the regulated companies in finding areas of commonality between regulators. It does not acknowledge or reflect that there are also alternative positions from consumer bodies - i.e Citizens Advice - that deserve meaningful scrutiny and attention.

⁶⁷ UKRN, [Guidance for regulators on the methodology for setting the cost of capital](#), March 2023

This is particularly disappointing as there is a clear commercial asymmetry. While companies and their shareholders have an unambiguous commercial incentive to ensure returns are as high as possible, our views are aligned with public interest and the government that returns should be neither too high nor too low.

We believe that the current methodology will likely lead to returns which are too high. In response to Ofgem's final determinations for ED2 we stated that the methodology resulted in at least £1.5 billion in excess returns going to companies using Ofgem's own cross-check figures⁶⁸. In our previous work *Monopoly Money*⁶⁹, we also found regulators allowed networks across essential markets to overcharge consumers by £24.1 billion over the past 15 years.

We recommended, again, that UKRN should revise its methodology for calculating cost of capital.

The government's consultation also identifies these issues citing the NAO's 2020 report on Electricity Networks, which highlights that, based on available data, energy network companies forecast 9.2% returns on average, in comparison with average FTSE returns of 5.25-5.75%⁷⁰.

Deploying the same methodology across regulators therefore risks compounding the problem and pushing up costs to consumers unnecessarily across water, energy and telecoms. While consistency is beneficial in principle, the approach must be able to evolve to reflect future evidence, rather than risk precluding this.

This is an important distinction between regulatory stability and regulatory predictability. Stability risks the wrong approaches becoming further embedded while predictability accepts the need for change and evolution but with confidence of regulatory rigour and transparency. Predictability should be the priority for government and regulators.

In the consultation on the UKRN guidance we expressed serious concerns that were not addressed on three areas: the equity risk premium, the equity beta

⁶⁸ Citizens Advice, [Our views on Ofgem Final Determinations RIIO-ED2](#), March 2023

⁶⁹ Citizens Advice, [Monopoly Money: How consumers overpaid by billions](#), 29 May 2019

⁷⁰ National Audit Office, ['Electricity Networks'](#), 2020,

and cost of debt⁷¹. In all three cases our positions aligned with the UKRN's own 2018 cost of capital study but were not recognised in the guidance. On the equity risk premium and equity beta our views were also recognised in findings by the CMA in regulatory appeals but, again, were not reflected in the guidance. As an example, when addressing our concerns that an upward bias⁷² exists in the approach to setting equity beta, the UKRN acknowledges that further research is required to quantify this bias. However, instead of proceeding with this research the UKRN chose instead to issue this guidance despite this noted upward bias.

Citizens Advice still recommends that UKRN should commission an update to their 2018 cost of capital study under a new process, including further research on areas where UKRN agreed it is needed⁷³. We would welcome encouragement from government for this to be carried out.

The process should also better address the inherent and structural asymmetries and enable a diversity of perspectives to be independently considered, in particular taking into account the views of those who represent consumer and public interest.

We would also recommend that the multi-criteria analysis set out in the government's consultation is revised to include costs and benefits to end consumers as this may not correlate with cost and benefits to industry and regulators.

⁷¹ Citizens Advice, [response to UKRN consultation on guidance for regulators on the methodology for setting the cost of capital](#), November 2022

⁷² Due to index investing

⁷³ UKRN, [Appendix A: Guidance Consultation Issues and Taskforce Response](#), March 2023, page 10

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