



HOUSE OF LORDS

Industry and Regulators Committee

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1st Report of Session 2023–24

# Who watches the watchdogs?

*Improving the performance, independence and  
accountability of UK regulators*

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### *Industry and Regulators Committee*

The Industry and Regulators Committee was appointed by the House of Lords on 13 May 2021 to consider matters relating to industry, including the policies of Her Majesty's Government to promote industrial growth, skills and competitiveness, and to scrutinise the work of UK regulators.

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Evidence is published online at <https://committees.parliament.uk/work/7958/uk-regulators/publications/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence

## SUMMARY

### Context

The UK is served by around 90 different regulators. These have been established or had their remits extended for various reasons, often in response to specific circumstances in particular sectors or failures in previous regulatory regimes. For example, the utilities regulators were established in sectors that are natural monopolies where companies would otherwise face little competitive pressure. In theory, the delegation of decisions from the Government to independent regulators can support long-term policy stability and guard against lobbying. Regulators now wield significant power and influence over the UK's economy and everyday life.

However, amid a series of high-profile failures, there are growing concerns about the functioning of the three-way relationship between the regulators, the Government, and Parliament, particularly the role and performance of regulators, their independence, and their accountability. If the integrity and legitimacy of the UK's regulators are to be preserved, these concerns must be addressed.

### Duties and objectives

When powers and responsibilities are delegated to regulators through legislation, it must be clear what politicians are asking them to achieve with those powers. Over time, many regulators have accrued new duties, objectives and matters to 'have regard to', some of which conflict with each other.

While there are cases of good practice where regulators have been given single duties or primary objectives, in many cases there is no sense of priority, meaning that some regulators do not have a sufficiently clear job to do. The Government and Parliament should avoid overloading regulators with too many objectives and make clear to regulators how objectives should be prioritised, particularly where they may conflict.

### Independence

Having a clear mandate makes it easier for regulators to act independently of the Government. Witnesses highlighted the value of independent regulation, which can support business confidence by reducing the effects of political volatility and enabling long-term decision-making separate from the electoral cycle. Such business confidence is a critical factor in the development of world-leading industries in the UK. In practice, however, the level of independence of the UK's regulators varies. While many regulators were keen to stress their independence from government, we heard concerns from some quarters about increasing politicisation of regulation.

In part, this is because it can be hard to separate regulatory decisions from public policy issues, particularly where regulatory decisions can have a large impact in areas like customers' bills or access to products. The Government provides strategic guidance to many regulators to try and resolve this difficulty and this mechanism can provide useful input.

Nonetheless, too often strategic guidance fails to provide clarity on how regulators should make trade-offs, instead reading as a long list of the Government's interests in a regulator's area of responsibility. This is of little use in providing

strategic clarity and effectively ducks decisions on which the Government should give a view. Regulators' boards should be given the power to seek guidance from the Government where they feel they do not have sufficient clarity on how to make decisions that involve political or distributional trade-offs.

The Government can also influence regulators through its appointment of regulators' boards, Chairs, and in some cases senior executives through the public appointments process. There is a worrying perception that the appointment and reappointment of some regulatory leaders reflects their political loyalties more than their suitability for the role.

Select committees currently scrutinise the appointments of some, but not all, of the regulators' Chairs and Chief Executives, including through pre-appointment hearings. Committees can play a greater role in this process to reaffirm the independence of appointees. If a select committee requests that pre-appointment scrutiny is extended to any such appointments, the Government should grant the request. Appointments that are not endorsed by the relevant select committee, and decisions not to re-appoint holders of key regulatory positions, should be accompanied by a public explanation.

The Government should also provide an explanation wherever it fails to make appointments to regulators' boards within three months. It is unacceptable that delays to these appointments have left some regulators struggling to reach the quorum necessary to take board decisions.

### **Resources and skills**

Some regulators also depend on the Government for their funding, which inevitably has an impact on their operational independence. We heard concerns that regulators in several sectors do not have sufficient resources to effectively carry out their functions. Others, however, can raise their own revenues through levies and charges, giving them more autonomy. When the Government carries out reviews of regulators, it should include specific consideration of the balance between demands on the regulator and its resources; and, where necessary, granting them powers to raise their own revenues.

Even where regulators have revenue raising powers, they can still find it challenging to recruit staff with the skills they need because of the higher pay on offer in the private sector, particularly in relation to digital and technological skills. The Government may need to allow regulators greater discretion to move outside of their current paycales in such areas. Where regulators face common issues and struggle to recruit staff, they should consider pooling their resources and setting up centres of excellence.

### **Accountability**

Regulators exercise substantial powers on behalf of Parliament and the public, but are not subject to the same forms of accountability as ministers; to quote one witness, "the people can replace their elected representatives, but they can't vote out bad regulators". Therefore, while it is right that regulators can exercise power independently, it is vital for democratic legitimacy that they are held to account for this.

**In this context, Parliament's role in scrutinising regulators, particularly through select committees, is of fundamental importance. However, there is a widespread**

perception, which the Committee shares, that regulators' accountability to Parliament is insufficient. In particular, we heard that parliamentary scrutiny tends to be reactive and piecemeal, rather than systematic and routine. This no doubt reflects the complexity of regulatory performance as a topic, the quantity of regulators and the limited time and resources available to committees, but it has led to a growing vacuum in regulatory accountability.

We appreciate the valuable work of both the National Audit Office (NAO) in scrutinising whether regulators deliver value for money, and that of the National Infrastructure Commission (NIC) in examining regulators' role in delivering key infrastructure. The Government should put the NIC on a statutory footing and give it greater freedom to examine government policy. However, giving either body greater responsibility for scrutinising regulators' overall performance would stretch their resources and complicate the clarity of their roles.

To plug the gap in regulatory accountability, we believe that a fresh approach is required. The Government should create a new, independent statutory body—the 'Office for Regulatory Performance'—to advise and support Parliament and its committees in holding regulators to account on a much more systematic and thorough basis. This would complement and improve existing parliamentary scrutiny. Extra resources from the Government would be required in order to fund its work, but given the fundamental importance of effective and regular public accountability, we believe this would be money well spent.

We also draw to the attention of other select committees the potential precedent created by the Treasury Select Committee's scrutiny of the Financial Services Authority following the 2008 financial crisis, in particular its embedding of Specialist Advisers into the regulator to review reports on the failings of banks. Select committees may wish to explore whether these methods could be used to examine shortcomings within regulators.

As well as the regulators themselves, government departments and ministers are an important piece of the accountability puzzle. Ministers and Departments responsible for specific regulators should be subject to scrutiny alongside these regulators. In the case of this inquiry, the Committee was disappointed by the Department for Business and Trade's limited engagement with this inquiry—particularly when accountability to Parliament was itself a central theme of our work. Despite ample notice, the Department did not provide the Committee with oral ministerial representation. Its written evidence was notable largely for its brevity, and for its lack of engagement with the questions in the Committee's call for evidence. We are unconvinced by the Department's argument that it was unable to engage with our inquiry further because of ongoing consultations. We will be following up with the Department in due course.

### **Transparency and engagement**

Accountability can be helped or hindered by regulators' own approach to transparency. We found that this was variable, and in some cases unsatisfactory. Regulators should set out performance information prominently, clearly and succinctly, rather than publishing reams of dense information. In doing so, they should explain how they have complied with their objectives, including matters they are required to 'have regard to'.

Scrutiny of regulators' performance raises the question of how this is measured, including through quantitative metrics. These must be used carefully, as not all

aspects of performance can be easily measured, and using the wrong metrics can create perverse incentives. Metrics should focus on outcomes rather than processes, and, to avoid regulators “marking their own homework”, the metrics that regulators adopt should also be subject to scrutiny.

Regulators’ decisions affect businesses and other regulated entities, as well as everyday consumers and workers. While there is an ever-present danger of regulatory capture by powerful interests, it is vital that there is open and frank dialogue between industry and regulators.

Consumers and workers, meanwhile, often find it difficult to have their voices heard by regulators. To remedy this, steps could be taken to integrate input from both groups into regulatory decision-making. In particular, the Government should consider expanding statutory provisions for independent consumer advocacy, which are currently present in some sectors but not others.

### Overall conclusions

When power is delegated to independent regulators, it must be clear what objectives they are expected to pursue and how these should be prioritised, which may alter and/or be added to over time. At present, some regulators are being overloaded and accumulating objectives without clear guidance on how they should prioritise between them.

Similarly, Parliament and the Government should make clear how policy priorities should be decided, for example on matters of social or economic policy that may be closer to government decision-making than regulators’ responsibility.

If these requirements are met, regulators should then operate with clarity and predictability, deliver their functions efficiently and be transparently accountable on clearer terms.

Scrutiny by Parliament and its select committees plays a crucial role in holding regulators and their performance to account. However, lack of resources and the large number of regulators means that too often scrutiny is reactive to publicity rather than systematic or timely.

To achieve more effective scrutiny, and improved regulatory performance, further resources and a new ‘Office for Regulatory Performance’ are needed.

# Who watches the watchdogs? Improving the performance, independence and accountability of UK regulators

## CHAPTER 1: BACKGROUND

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### UK regulators in context

1. According to the National Audit Office (NAO), there are around 90 regulators in the UK.<sup>1</sup> The UK's regulators cover a wide range of policy areas, including but not limited to financial services, utilities, communications, transport, education, healthcare and the environment.<sup>2</sup> Their powers, responsibilities and funding vary.
2. Regulators can be divided into statutory regulators, which are given powers by Parliament to regulate in certain ways, and non-statutory regulators, such as professional accreditation bodies. In turn, statutory regulators can be divided into those which are public bodies (for example, Ofgem<sup>3</sup>) and those that are non-governmental bodies (such as the General Medical Council, which is a registered charity).<sup>4</sup>
3. Regulators set up as public bodies can take a number of forms, including non-ministerial departments, non-departmental public bodies, executive agencies, and statutory corporations.<sup>5</sup> Furthermore, certain public bodies that are not generally considered regulators, such as local authorities and enforcement bodies, may nonetheless deliver regulatory functions.
4. Regulators have been established in the UK for various reasons, often “in response to specific circumstances within a particular sector” or “following perceived failures in previous regulatory regimes”.<sup>6</sup> In the case of the

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1 This figure does not include local authorities, which sometimes exercise regulatory functions. See National Audit Office, *Regulation overview 2019* (March 2020): <https://www.nao.org.uk/wp-content/uploads/2020/03/Overview-Regulation-2019.pdf> [accessed 19 December 2023]

2 A number of regulators operate in devolved policy areas. For example, the Food Standards Agency's remit covers England, Wales and Northern Ireland, with a separate body (Food Standards Scotland) responsible for the same functions in Scotland. For the purposes of this report, however, we have focused on those regulators whose jurisdiction makes them accountable to the UK Government and the UK Parliament, rather than those which (because of their devolved remit) are accountable to the devolved administrations and legislatures.

3 Ofgem, 'Our role and responsibilities': <https://www.ofgem.gov.uk/about-us/our-role-and-responsibilities> [accessed 19 December 2023]

4 General Medical Council, 'About us': <https://www.gmc-uk.org/about> [accessed 19 December 2023]

5 To give examples, Ofwat is a non-ministerial department; the Environment Agency is a non-departmental public body; the Medicines and Healthcare products Regulatory Agency is an executive agency; and Ofcom is a statutory corporation. See HM Government, 'Departments, agencies and public bodies': <https://www.gov.uk/government/organisations> [accessed 19 December 2023]

6 Written evidence from the Institute of Regulation ([UKR0028](#))

economic regulators<sup>7</sup>, Stuart Hudson, Partner at Brunswick and a former official at Ofgem and the Competition and Markets Authority (CMA), told us that these were established in the 1980s and 1990s “in order to prevent a newly privatised utility from exploiting market power and charging excessive prices”.<sup>8</sup> Similarly, Citizens Advice explained that in sectors such as energy, water and broadband, consumers “have no way of rewarding or punishing” companies who face little competitive pressure to drive down their prices, which is why regulators in these sectors set price controls.<sup>9</sup>

5. Witnesses emphasised the important role regulators play in the UK’s economy and society. The Institute of Regulation stressed that “efficient and effective regulation enables businesses to thrive and innovate and public services to be well run and improve”.<sup>10</sup> Virginia Acha, Associate Vice-President for Global Regulatory Policy at the pharmaceutical company MSD, commented that in her sector, “I cannot think of a single place in the world where you have a thriving life sciences cluster and you do not have a world-leading regulator, because there is a symbiosis.”<sup>11</sup> The Department for Business and Trade (DBT) said that regulators play “a vital role in protecting consumers, the environment and setting the right frameworks for businesses to thrive”.<sup>12</sup>
6. Nominally, regulators operate independently of government. Stuart Hudson argued that this delegation of decisions beyond direct political control was “unusual” in a democracy, but added that the creation of independent regulators had normally happened for two reasons: to ensure long-term political and economic stability, and to guard against political lobbying of ministers by industry.<sup>13</sup> However, concerns were raised as to how independent the UK’s regulators are in practice. We discuss this further in Chapter 3.
7. Regulators are held to account for the power they wield in various ways: by their sponsoring government department, by Parliament (including its committees), by other bodies such as the NAO, by those they regulate, and by consumers. We discuss these forms of accountability, how they are functioning, and how they could be improved in Chapter 5.
8. Some of the UK’s regulators have recently inherited additional responsibilities from EU institutions and regulatory agencies following Brexit, with implications for both their resources and how they are held accountable for this increased power.<sup>14</sup> We do not examine this extensively in this report, but we acknowledge that this forms an important part of the context within which the UK’s regulators operate.

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7 According to the National Audit Office, the economic regulators are those which “promote competitive forces in industries which would otherwise be natural monopolies due to high network or infrastructure costs”. Major economic regulators include Ofgem, Ofwat, Ofcom, the Office for Road and Rail and the Civil Aviation Authority. National Audit Office, *A short guide to Regulation*, (September 2017): <https://www.nao.org.uk/wp-content/uploads/2017/09/A-Short-Guide-to-Regulation.pdf> [accessed 19 December 2023]

8 Written evidence from Stuart Hudson ([UKR0003](#))

9 Written evidence from Citizens Advice ([UKR0063](#))

10 Written evidence from the Institute of Regulation ([UKR0028](#)); see also written evidence from Unchecked UK ([UKR0011](#))

11 [Q 26](#) (Virginia Acha)

12 Written evidence from Department for Business and Trade ([UKR0089](#))

13 Written evidence from Stuart Hudson ([UKR0003](#))

14 See paragraphs 124 and 161

### Recent government policy

9. The Government has recently launched a number of initiatives aimed at reviewing the UK's regulators. In April 2022, the Cabinet Office announced the launch of a Public Bodies Review Programme, through which departments would be asked to review their public bodies (including but not limited to regulators).<sup>15</sup> This programme is ongoing.
10. In May 2023, DBT published a policy paper, titled *Smarter regulation to grow the economy*. The paper outlines the Government's agenda to ensure regulators help drive economic growth.<sup>16</sup>
11. In October 2023, DBT announced an in-depth review into all regulators with a 12-week public call for evidence, which it said would seek to ensure regulators are "working efficiently and delivering on reforms needed to help grow the economy and protect consumers". The call for evidence closed on 17 January 2024.<sup>17</sup> We understand that the Government plans to publish its response to the consultation in the coming months.
12. In November 2023, alongside the Autumn Statement, DBT published two consultations as part of its *Smarter Regulation* programme. The first consultation sought views on revised statutory guidance for the Growth Duty,<sup>18</sup> and the Government's intention to extend this duty to Ofgem, Ofwat and Ofcom. The consultation closed on 17 January 2024.<sup>19</sup> The second consultation was on strengthening the economic regulation of the energy, water and telecoms sectors.<sup>20</sup> This consultation closed on 28 January 2024.

### This inquiry

13. Since its inception in 2021, this Committee has examined seven individual regulators. This has included three major inquiries into: Ofgem and Net Zero;<sup>21</sup> water and sewage regulation (encompassing Ofwat and the Environment Agency);<sup>22</sup> and the Office for Students (OfS).<sup>23</sup> The Committee has also conducted shorter pieces of work into commercial insurance and reinsurance

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15 Cabinet Office, *Guidance on the undertaking of Reviews of Public Bodies* (25 September 2023): <https://www.gov.uk/government/publications/public-bodies-review-programme/guidance-on-the-undertaking-of-reviews-of-public-bodies> [accessed 19 December 2023]

16 Department for Business and Trade, *Smarter Regulation to grow the economy* (10 May 2023): <https://www.gov.uk/government/publications/smarter-regulation-to-grow-the-economy/smarter-regulation-to-grow-the-economy> [accessed 19 December 2023]

17 The call for evidence included questions on: the complexity of the regulatory system; regulators' skills; whether their approaches are proportionate; the governance of regulators; whether they are delivering on their objectives; and performance monitoring. Department for Business and Trade, *Smarter Regulation and the regulatory landscape* (23 October 2023): <https://www.gov.uk/government/calls-for-evidence/smarter-regulation-and-the-regulatory-landscape> [accessed 20 December 2023]

18 Regulators subject to the Growth Duty must "have regard to the desirability of promoting economic growth". Deregulation Act 2015, [Section 108](#)

19 Department for Business and Trade, *Smarter Regulation: regulating for growth* (22 November 2023): <https://www.gov.uk/government/consultations/smarter-regulation-regulating-for-growth> [accessed 19 December 2023]

20 Department for Business and Trade, *Smarter regulation: strengthening the economic regulation of the energy, water and telecoms sectors* (22 November 2023): <https://www.gov.uk/government/consultations/smarter-regulation-strengthening-the-economic-regulation-of-the-energy-water-and-telecoms-sectors> [accessed 19 December 2023]

21 Industry and Regulators Committee, 'Ofgem and Net Zero Inquiry' (August 2021): <https://committees.parliament.uk/work/1320/ofgem-and-net-zero/> [accessed 5 December 2024]

22 Industry and Regulators Committee, 'The Work of Ofwat Inquiry' (June 2022): <https://committees.parliament.uk/work/6719/the-work-of-ofwat/> [accessed 5 December 2024]

23 Industry and Regulators Committee, 'Office for Students Inquiry' (April 2023): <https://committees.parliament.uk/work/7347/the-work-of-the-office-for-students/> [accessed 5 December 2024]

regulation (encompassing the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA)),<sup>24</sup> and the use of liability-driven investment by pension funds (which covered The Pensions Regulator (TPR), the FCA and the PRA).<sup>25</sup>

14. In previous inquiries, certain themes and concerns arose repeatedly, including the clarity of regulators' remits, the quality of government guidance to regulators, the independence of regulators from the Government, and how they are held to account. We therefore launched a short, cross-cutting inquiry in October 2023 to examine these matters further.
15. We held a total of nine evidence sessions between October and December 2023, with a total of 15 witnesses, including current and former regulators, business and consumer representatives, parliamentarians of both Houses, and other relevant bodies such as the NAO and the National Infrastructure Commission (NIC). We received 91 public written evidence submissions. In total, we received evidence either orally or in writing from 15 of the UK's regulators.<sup>26</sup>

### Departmental input

16. The most relevant government department for this inquiry was the Department for Business and Trade. Unfortunately, however, we were unable to secure an oral evidence session with a DBT Minister.
17. We first approached Rt Hon Kemi Badenoch MP, the Secretary of State for Business and Trade, in July 2023. The Chair wrote to the Secretary of State to invite her to give evidence to the Committee.<sup>27</sup>
18. Over the subsequent months, and despite further prompting, the Department did not commit to a date for the Secretary of State's appearance. In November, the Committee was informed that the Secretary of State was declining to appear herself, and that the appearance before the Committee would be delegated to another departmental minister. The Chair wrote to the Secretary of State to ask her to reconsider this,<sup>28</sup> but her position was unchanged.

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24 Industry and Regulators Committee, 'Commercial insurance and reinsurance regulation inquiry' (February 2022): <https://committees.parliament.uk/work/6438/commercial-insurance-and-reinsurance-regulation/> [accessed 5 December 2024]

25 Industry and Regulators Committee, 'The use of LDI by pension funds, Non-inquiry session' (November 2022): <https://committees.parliament.uk/work/7025/the-use-of-ldi-by-pension-funds/> [accessed 5 December 2024]

26 These were the Competition and Markets Authority (QQ 70-85, UKR0079); the Financial Conduct Authority (UKR0039); Ofgem (UKR0094); Ofcom (UKR0081); the Civil Aviation Authority (UKR0015); the Charity Commission (UKR0083); the Food Standards Agency (UKR0085); the Health and Safety Executive (UKR0082); the Environment Agency (UKR0025); Ofqual (UKR0062); Ofsted (UKR0038); the Information Commissioner's Office (UKR0058); the Payment Systems Regulator (UKR0055); the Health and Care Professions Council (UKR0023); and the Care Quality Commission (UKR0030). The Committee also received written evidence from the Bank of England (UKR0073), which exercises some regulatory functions and includes the Prudential Regulatory Authority.

27 Initially, this was conceived and presented as a non-inquiry session on the wider work of the Department. However, following the launch of this inquiry, the Department was informed that the proposed session would also cover UK regulators. Letter from Lord Hollick, Chair of the Industry and Regulators Committee, to The Rt Hon Kemi Badenoch MP, Secretary of State for Business and Trade (19 July 2023): <https://committees.parliament.uk/publications/41003/documents/199662/default/>

28 Letter from Lord Hollick, Chair of the Industry and Regulators Committee, to The Rt Hon Kemi Badenoch MP, Secretary of State for Business and Trade (7 November 2023): <https://committees.parliament.uk/publications/41996/documents/208847/default/>

19. Following this, attempts were made to secure an evidence session with another DBT minister. However, the Committee and the Department were unable to agree on a suitable date or basis for the session, in part because of the Department's position that then ongoing consultations (those listed in paragraphs 11–12) would significantly constrain what a minister could say in public. In that context, the Committee decided to proceed with the publication of its report without holding an oral evidence session with a minister.
20. Instead of a ministerial appearance, we received as written evidence a short letter from Lord Johnson of Lainston, Minister for Investment at the Department. The letter did not address the questions in the Committee's call for evidence in any detail, and for this reason, it does not feature extensively in this report. Instead, the letter set out the Department's then ongoing consultations, and its position that it "cannot prejudge the findings of the [Department's] call for evidence and each of the consultations", as this would "risk impacting ongoing engagement with businesses and stakeholders". The Minister said he was "keen that my department discusses the findings of these works with the Committee in due course".<sup>29</sup>
21. We were pleased, however, to receive a separate, more detailed submission from the Department of Education, with respect to the regulators that it sponsors.<sup>30</sup>
22. **We were disappointed by the Department for Business and Trade's limited engagement with our inquiry. The Department did not provide the Committee with oral ministerial representation, despite ample notice. Its subsequent written submission was brief and, importantly, did not answer the questions in the Committee's call for evidence in any detail. We are unconvinced by the Department's explanation that ongoing consultations prevented it from engaging with our inquiry further.**
23. **Given the widespread concerns we heard about the accountability of regulators, it is all the more frustrating that the Department acted in a manner which hampered the Committee's own attempts to hold the Government to account for its important role in this area. We intend to follow up with the Department following their response to this report.**

### **This report**

24. Chapter 2 of this report covers the duties and objectives of UK regulators, and whether they are clear and consistent. Chapter 3 discusses the extent to which the UK's regulators are independent, while Chapter 4 discusses regulators' resources and skills. Chapter 5 examines how regulators are held to account, including by Parliament. Chapter 6 discusses regulators' transparency and how they engage with businesses and consumers.

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29 Written evidence from the Department for Business and Trade ([UKR0089](#))

30 Written evidence from the Department for Education ([UKR0090](#))

## CHAPTER 2: DUTIES AND OBJECTIVES

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25. When regulators are delegated powers and responsibilities through legislation, they are usually given statutory duties or objectives that they are expected to pursue or abide by when fulfilling their functions. For instance, the CMA, the UK's competition regulator, has a single statutory duty: "to promote competition, both within and outside the United Kingdom, for the benefit of consumers".<sup>31</sup>
26. In some cases, regulators are given duties to "have regard" to particular issues as they carry out their functions.<sup>32</sup> For example, a number of regulators are subject to the Growth Duty, under which they must "have regard to the desirability of promoting economic growth".<sup>33</sup>

### Expansion of objectives

27. Several witnesses told us that regulatory objectives have expanded over time.<sup>34</sup> Stuart Hudson, formerly of Ofgem and the CMA, said that "the job given to economic regulators has become more complex since they were first created", increasingly encompassing "public policy considerations" such as social and environmental issues.<sup>35</sup> The Regulatory Reform Group, a caucus of Conservative parliamentarians<sup>36</sup>, contended that "continued political intervention and the expansion of many regulatory remits through new legislation" had left regulators "faced with vast numbers of primary and secondary objectives and obligations to 'have regards' to".<sup>37</sup>
28. The Institute for Government explained that "ministers have tended to add more objectives" and issues to have regard to, which can include "growth, competitiveness, net zero, consumer protection, and even statements of wider government policy".<sup>38</sup>
29. Julia Black, Professor of Law at the London School of Economics (LSE), posited that "Parliament needs to be cautious of overloading regulators with multiple 'have regards'", which could "distract" from their overall objectives.<sup>39</sup> Michael Gibbons, Senior Non-Executive Director at Bluefield Solar Income Fund and a former Chair of the Regulatory Policy Committee (RPC), said that 'have regard' objectives are "not really a clear objective" and lead to "a lack of clarity" when they are introduced.<sup>40</sup>
30. Lord Tyrie, a former Chair of the CMA and the Treasury Select Committee, reasoned that "in general, the fewer objectives, the better", otherwise "cherry-picking is inevitable". He raised the "risk of overload" caused by

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31 Enterprise and Regulatory Reform Act 2013, [Part 3](#)

32 Written evidence from the Institute for Government ([UKR0006](#))

33 Deregulation Act 2015, [Section 108](#)

34 Written evidence from Professor Robin Ellison ([UKR0005](#)), written evidence from the Institute for Government ([UKR0006](#)), written evidence from the Centre for Competition Policy ([UKR0022](#)), written evidence from the Institute of Regulation ([UKR0028](#)), written evidence from techUK ([UKR0077](#))

35 Written evidence from Stuart Hudson ([UKR0003](#))

36 The current members of the Regulatory Reform Group are Sir Robert Buckland MP, Alun Cairns MP, Vicky Ford MP, Richard Fuller MP, Mark Garnier MP, Stephen Hammond MP, James Wild MP, and Lord Andrew Tyrie.

37 Written evidence from the Regulatory Reform Group ([UKR0078](#))

38 Written evidence from the Institute for Government ([UKR0006](#))

39 Written evidence from Professor Julia Black ([UKR0034](#))

40 [Q 22](#) (Michael Gibbons)

too many regulatory objectives, suggesting that “the more we pile on, the more likely it is that ... regulators will fail to carry the burden”.<sup>41</sup> Dame Meg Hillier MP, Chair of the Public Accounts Committee, agreed that if there are too many duties, regulators will focus on what is urgent or “in the news” and place less emphasis on the day-to-day running of their organisations.<sup>42</sup> We also heard that having too many objectives can lead to “confusion” and distraction, making organisations “hard to manage” and causing delays in decision-making.<sup>43</sup>

### Tensions between objectives

31. The Institute of Regulation noted that “in some cases, the statute is clear”, but that in others, “the regulators are given multiple, sometimes conflicting directions on priorities”.<sup>44</sup> Richard Sullivan-Jones, Senior Audit Manager at the NAO, said that “tensions and trade-offs between different objectives” are a “common feature”, particularly between investment in environmental outcomes and the affordability of bills for consumers.<sup>45</sup> For example, during its past inquiries, this Committee found that both Ofgem<sup>46</sup> and Ofwat<sup>47</sup> face trade-offs between the affordability of customer bills and the need for infrastructure investment to secure energy and water supplies and to pursue environmental objectives.
32. The Centre for Competition Policy suggested that the trade-offs are “often of a political nature and sometimes more appropriately addressed by government”.<sup>48</sup> Charles Randell, a Senior Consultant at Slaughter and May and a former Chair of the FCA, said that “regulators do not have the democratic legitimacy” to take decisions around topics such as consumers being excluded from services, suggesting that this “very fundamental set of questions” has to be “solved through the political system”.<sup>49</sup> Cadent Gas noted that the energy transition “is subject to increasing political heat and controversy” and that in order to maintain trust in the work of Ofgem, “it will be necessary for the Government to be involved in, and accountable for, decisions that have significant distributional consequences”.<sup>50</sup>
33. Dame Meg Hillier MP emphasised that “inevitably, regulators will deal with political issues”, but stressed their “need to know what their core responsibility

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41 [Q 13](#) (Lord Tyrie)

42 [Q 54](#) (Dame Meg Hillier MP); see also [Q 39](#) (John Penrose MP)

43 [Q 22](#) (Filippo Pollara, Michael Gibbons), written evidence from the Institute for Government ([UKR0006](#)), written evidence from Professor Julia Black ([UKR0034](#))

44 Written evidence from the Institute of Regulation ([UKR0028](#))

45 [Q 2](#) (Richard Sullivan-Jones). See also [Q 31](#) (David Mendes da Costa), written evidence from Charles Randell ([UKR0003](#)), written evidence from Unchecked UK ([UKR0011](#)), written evidence from John Picton ([UKR0013](#)), written evidence from Civil Society Alliance ([UKR0021](#)), written evidence from the Centre for Competition Policy ([UKR0022](#)), written evidence from Prospect ([UKR0029](#)), written evidence from Professor Julia Black ([UKR0034](#)), written evidence from Blueprint for Water ([UKR0064](#)), written evidence from the Professional Standards Authority ([UKR0066](#)), written evidence from South West Water ([UKR0068](#)), written evidence from Phoenix Group ([UKR0069](#)), written evidence from the Centre for Policy Studies ([UKR0076](#)), written evidence from the Regulatory Reform Group ([UKR0078](#))

46 Industry and Regulators Committee, *The net zero transformation: delivery, regulation and the consumer* (1st Report, Session 2021–22, HL Paper 162)

47 Industry and Regulators Committee, *The net zero transformation: delivery, regulation and the consumer* (1st Report, Session 2021–22, HL Paper 162)

48 Written evidence from the Centre for Competition Policy ([UKR0022](#))

49 [Q 18](#) (Charles Randell)

50 Written evidence from Cadent Gas ([UKR0067](#))

is”.<sup>51</sup> John Penrose MP agreed that “Parliament can legitimately hand over” some political and distributional responsibilities, but that doing so with a “confused mandate” puts regulators “in a very uncomfortable situation”.<sup>52</sup>

### Prioritisation of objectives

34. In some cases, legislation provides prioritisation of duties and objectives, for instance by providing a primary or principal objective, with other objectives being described as secondary objectives or issues to have regard to. For example, while discharging its general functions in a way that advances its two primary objectives, the Prudential Regulation Authority (PRA) “must also, so far as reasonably possible, act in a way which facilitates its secondary objectives”.<sup>53</sup> The PRA also has “a large number of factors” that it “must have regard” to, which are set out in legislation and through recommendation letters from HM Treasury.<sup>54</sup>
35. This level of prioritisation is not always evident, however. Our report on the OfS found that it had been given several general duties to ‘have regard’ to with no sense of prioritisation, giving the regulator “a large degree of freedom in choosing what to focus on.”<sup>55</sup>
36. techUK considered that “it is for government and Parliament to play a strategic role in setting that direction for regulators and making clear which priority should take precedence over others when it comes to ... resolving trade-offs.”<sup>56</sup> John Penrose MP suggested that “a sufficiently clear, unambiguous and short list of priorities” would help senior officials at regulators to “speak truth to power” and resist short-term pressures.<sup>57</sup> The Civil Aviation Authority (CAA) suggested that “while regulators are usually well-equipped to make independent decisions ... greater direction on trade-offs ... may be beneficial”.<sup>58</sup>
37. However, Gareth Davies, Comptroller and Auditor General at the NAO, argued that “the business of regulation is holding competing objectives in the right balance”.<sup>59</sup> Ofsted suggested that if the regulatory approach is “exclusively enshrined in legislation it becomes much harder for a regulator to be responsive to change”.<sup>60</sup>

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51 [Q 55](#) (Dame Meg Hillier MP)

52 [Q 40](#) (John Penrose MP)

53 The Prudential Regulation Authority prudentially regulates and supervises banks and insurers. It has two primary objectives: a general objective of “promoting the safety and soundness of PRA-authorized persons”, and an insurance objective of “contributing to the securing of an appropriate degree of protection for those who are or may become policyholders”. It has two secondary objectives, to facilitate competition in the markets it supervises and to facilitate the international competitiveness of the UK. Financial Services and Markets Act 2000, [section 2H](#)

54 Written evidence from the Bank of England ([UKR0073](#))

55 Industry and Regulators Committee, *Must do better: the Office for Students and the looming crisis facing higher education* (2nd Report, Session 2022–23, HL Paper 246)

56 Written evidence from techUK ([UKR0077](#))

57 [Q 42](#) (John Penrose MP)

58 Written evidence from the Civil Aviation Authority ([UKR0015](#))

59 [Q 2](#) (Gareth Davies)

60 Written evidence from Ofsted ([UKR0038](#))

38. Some submissions, including from the Department for Education and several regulators, argued that regulators have clear duties and remits.<sup>61</sup> Dame Patricia Hodgson, a former Chair of Ofcom, explained that Ofcom has a “top priority” of the consumer and citizen interest, accompanied by “a lot of secondary objectives ... and then many matters that it must have regard to”. She suggested that “that prioritisation and that degree of clarity gave it helpful underpinnings” for its “wide range of difficult balancing decisions”.<sup>62</sup> Marcus Bokkerink, Chair of the CMA, explained that his regulator has a “single duty to promote competition for the benefit of consumers”, arguing that “this singularity of duties is really helpful. It allows us to have consistency of purpose and consistency of application”.<sup>63</sup>
39. DBT’s written evidence<sup>64</sup> referred to its recent consultation on strengthening the economic regulation of the energy, water and telecoms sectors, which acknowledges that there is a need to “ensure that regulators are not overloaded”. The consultation argued that the balancing of duties by the economic regulators is “fundamental to independent regulation” and that “regulators are used to this”, but accepted that “with more duties and responsibilities ... it can be harder for them to prioritise and trade-off amongst them”. The consultation outlined the Government’s intention to conduct “a thorough review of duties, with a view to rationalise duties and enable regulators to focus more on economic duties and functions”.<sup>65</sup>
40. Despite these comments, the Government has also announced its intention to extend the Growth Duty, which requires regulators to have regard to the desirability of achieving economic growth, to the economic regulators.<sup>66</sup>
41. More broadly, the Government’s ongoing Public Bodies Review Programme<sup>67</sup> includes considering whether bodies are “operating with a clear purpose” and whether decisions being taken by them “would be best taken by ministers”.<sup>68</sup> A number of regulators have already been reviewed as part of the programme,

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61 Written evidence from Timothy Bush ([UKR0014](#)), written evidence from the Association for the British Pharmaceutical Industry ([UKR0020](#)), written evidence from the Consumer Council for Water ([UKR0026](#)), written evidence from the Care Quality Commission ([UKR0030](#)), written evidence from BUUK Infrastructure ([UKR0044](#)), written evidence from the Payment Systems Regulator ([UKR0055](#)), written evidence from Ofqual ([UKR0062](#)), written evidence from South West Water ([UKR0068](#)), written evidence from Phoenix Group ([UKR0069](#)), written evidence from UK Finance ([UKR0075](#)), written evidence from the Department for Education ([UKR0090](#))

62 [Q 59](#) (Dame Patricia Hodgson)

63 [Q 70](#) (Marcus Bokkerink)

64 Written evidence from the Department for Business and Trade ([UKR0089](#))

65 Department for Business and Trade, *Smarter regulation: strengthening the economic regulation of the energy, water and telecoms sectors* (November 2023): <https://www.gov.uk/government/consultations/smarter-regulation-strengthening-the-economic-regulation-of-the-energy-water-and-telecoms-sectors> [accessed 19 December 2023]

66 Department for Business and Trade, *Government response: consultation on extending the Growth Duty to the economic regulators Ofgem, Ofwat and Ofcom* (November 2023): [https://www.gov.uk/government/consultations/smarter-regulation-extending-the-growth-duty-to-ofgem-ofwat-and-ofcom?utm\\_medium=email&utm\\_campaign=govuk-notifications-topic&utm\\_source=9480c439-d8a3-43c8-8de1-1eb670ad9e46&utm\\_content=daily#full-publication-update-history](https://www.gov.uk/government/consultations/smarter-regulation-extending-the-growth-duty-to-ofgem-ofwat-and-ofcom?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=9480c439-d8a3-43c8-8de1-1eb670ad9e46&utm_content=daily#full-publication-update-history) [accessed 12 January 2024]

67 Cabinet Office, Press Release: New public bodies review programme launched on 26 April 2023: <https://www.gov.uk/government/news/new-public-bodies-review-programme-launched> [accessed 19 December 2023]

68 Cabinet Office, *Guidance on the undertaking of Reviews of Public Bodies* (updated 25 September 2023): <https://www.gov.uk/government/publications/public-bodies-review-programme/guidance-on-the-undertaking-of-reviews-of-public-bodies#purpose-of-alb-reviews> [accessed 19 December 2023]

including the CAA<sup>69</sup>, TPR<sup>70</sup>, the Health and Safety Executive (HSE)<sup>71</sup> and the Office for Environmental Protection (OEP).<sup>72</sup> Several other regulators are set to be reviewed under the Programme in 2023–24.<sup>73</sup>

42. **Some regulators have been given too many statutory duties, objectives and issues to have regard to by government and Parliament without a clear sense of priority. In the context of finite resources, this makes it difficult for a regulator to achieve each in turn and increases the potential for tensions and conflict between them. That said, there are cases of good practice, where regulators have been given singular or primary objectives, providing a clearer sense of priorities.**
43. *It is welcome that the Government is actively considering these issues as part of its Smarter Regulation programme and plans to review the duties of each of the economic regulators. In doing so, it should focus their objectives on their core role and avoid overloading them with too many objectives, especially those which they should “consider”, “take account of” or “have regard to”. Where there are political or distributional trade-offs between those objectives that remain, the Government should provide clarity on how regulators should prioritise between them.*
44. *The Government should undertake similar reviews of the duties of all regulators when they are reviewed as part of the Public Bodies Review Programme. These reviews should aim to streamline the duties and objectives of regulators and provide the greatest possible prioritisation in the event of conflicts.*

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69 Department for Transport, *Civil Aviation Authority review: report* (17 July 2023): <https://www.gov.uk/government/publications/civil-aviation-authority-public-body-review-terms-of-reference/civil-aviation-authority-review-report> [accessed 19 December 2023]

70 Department for Work and Pensions, *Independent review of The Pensions Regulator* (3 October 2023): <https://www.gov.uk/government/publications/independent-review-of-the-pensions-regulator-tpri/independent-review-of-the-pensions-regulator-tpri> [accessed 19 December 2023]

71 Department for Work and Pensions, *Public Bodies review of the Health and Safety Executive* (25 May 2023): <https://www.gov.uk/government/publications/health-and-safety-executive-public-bodies-review/public-bodies-review-of-the-health-and-safety-executive-hse> [accessed 19 December 2023]

72 Department for Environment, Food and Rural Affairs, *Outcome recommendations from the OEP review 2022 to 2023* (11 August 2023): <https://www.gov.uk/government/publications/office-for-environmental-protection-public-body-review-outcome/outcome-recommendations-from-the-oepr-review-2022-to-2023> [accessed 19 December 2023]

73 Cabinet Office, *List of Public Bodies for Review in 2023/24* (updated 25 September 2023): <https://www.gov.uk/government/publications/public-bodies-review-programme/list-of-public-bodies-for-review-in-202324> [accessed 19 December 2023]

## CHAPTER 3: INDEPENDENCE, STRATEGIC GUIDANCE AND APPOINTMENTS

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### Independence

45. As noted in Chapter 1, the UK’s regulators formally operate independently of the Government. Stuart Hudson, formerly of Ofgem and the CMA, explained that in pursuing the duties and objectives they are given by Parliament, “regulators are given the power to make decisions which have little or no ministerial oversight”, at least in principle.<sup>74</sup>
46. In a recent consultation, the Government said that “regulators are appointed to be independent of, and at arm’s length from, Government in fulfilling their functions”.<sup>75</sup>
47. Nevertheless, the Government has many means of influencing the activities of regulators, including through their broader policy frameworks, their appointment of senior regulatory staff, and in the case of some regulators, by deciding what resources they have.<sup>76</sup> The Government also provides many regulators with guidance on the Government’s priorities.<sup>77</sup>

### Benefits of independence

48. Professor Julia Black from the LSE explained many of the justifications for regulators’ independence:
- “In order to perform their role effectively, they need to have deep knowledge and expertise in the areas they oversee, they need to make informed, objective and impartial decisions which will generate trust and legitimacy, and they need to make time-consistent decisions in order to provide certainty and in some instances to facilitate investment”.<sup>78</sup>
49. Many witnesses emphasised the importance and benefits of independence.<sup>79</sup> Charles Randell, the former FCA Chair, said that independent regulation “generally provides more transparent, evidence-based and predictable decision-making than a politically dominated system”.<sup>80</sup>

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74 Written evidence from Stuart Hudson ([UKR0003](#))

75 Department for Business and Trade, *Consultation on the Growth Duty, draft statutory guidance* (November 2023): <https://assets.publishing.service.gov.uk/media/655e18c45395a900124635f1/consultation-on-the-growth-duty-draft-statutory-guidance.pdf> [accessed 12 January 2024]

76 Written evidence from Stuart Hudson ([UKR0003](#)), written evidence from Professor Robin Ellison ([UKR0005](#)), written evidence from Unchecked UK ([UKR0011](#)), written evidence from the Civil Aviation Authority ([UKR0015](#))

77 Written evidence from Stuart Hudson ([UKR0003](#))

78 Written evidence from Professor Julia Black ([UKR0034](#))

79 [Q 33](#) (David Mendes da Costa), [Q 40](#) (John Penrose MP), [Q 60](#) (Dame Patricia Hodgson), [Q 71](#) (Marcus Bokkerink), written evidence from Stuart Hudson ([UKR0003](#)), written evidence from Unchecked UK ([UKR0011](#)), written evidence from the Centre for Competition Policy ([UKR0022](#)), written evidence from Prospect ([UKR0029](#)), written evidence from the Care Quality Commission ([UKR0030](#)), written evidence from the Financial Conduct Authority ([UKR0039](#)), written evidence from the Information Commissioner’s Office ([UKR0058](#)), written evidence from Ofqual ([UKR0062](#)), written evidence from the Professional Standards Authority ([UKR0066](#)), written evidence from South West Water ([UKR0068](#)), written evidence from Microsoft ([UKR0074](#)), written evidence from UK Finance ([UKR0075](#)), written evidence from techUK ([UKR0077](#)), written evidence from the Regulatory Reform Group ([UKR0078](#)), written evidence from Ofcom ([UKR0081](#)), written evidence from the Charity Commission ([UKR0083](#)), written evidence from National Grid ([UKR0084](#)), written evidence from the Food Standards Agency ([UKR0085](#))

80 Written evidence from Charles Randell ([UKR0002](#))

50. The London Market Group held that regulatory independence is “a central feature” of the UK’s financial regulation, as businesses “need to know that regulators are impartial and free from undue political and business influence”.<sup>81</sup> Cadent Gas suggested that independence provides “some insulation from the influence of lobbying”.<sup>82</sup> Virginia Acha of MSD, argued that the discretion granted by independence “allows the regulator to have flexibility to act where technologies and circumstances change”, such as in response to the Covid-19 pandemic.<sup>83</sup>
51. For the NAO, Gareth Davies also stressed the “really important” role of independent regulators in raising issues “where it thinks government needs to take a policy view”.<sup>84</sup> Dame Meg Hillier MP, Chair of the Public Accounts Committee, agreed that “telling truth to power” is “an important part” of regulators’ roles and should be welcomed.<sup>85</sup>
52. **The evidence we received highlighted the value of regulatory independence. Independence enables regulators to act flexibly in response to emerging challenges and allows them the freedom to speak truth to power. It also supports business confidence and investment by separating regulatory decisions from preferential political treatment and the electoral cycle.**

*How independent are the UK’s regulators?*

53. A number of submissions, including many from regulators, expressed confidence that the UK’s regulators are sufficiently independent.<sup>86</sup> The FCA said that its operational independence is “internationally respected”, while the Information Commissioner’s Office (ICO) said that the relevant legislation and regulations “enshrine the Commissioner’s independence in law”.<sup>87</sup>
54. The CMA said that while there is “political interest” in its work, this “does not change the well-established and transparent processes by which we reach objective, evidence-based, independent decisions”.<sup>88</sup> The HSE said that while it is “funded by and accountable to Ministers”, its inspection, investigation and enforcement decisions are “completely independent from Ministers”.<sup>89</sup> The Department for Education argued that the regulators it sponsors are “appropriately independent of the Government”.<sup>90</sup>
55. The Regulatory Reform Group stated its view that “on the whole, our major economic regulators are sufficiently independent of government”.<sup>91</sup> Prof Black said that “most regulators in the UK are sufficiently independent most

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81 Written evidence from the London Market Group ([UKR0043](#))

82 Written evidence from Cadent Gas ([UKR0067](#))

83 [Q 22](#) (Virginia Acha)

84 [Q 2](#) (Gareth Davies)

85 [Q 57](#) (Dame Meg Hillier MP)

86 Written evidence from the Consumer Council for Water ([UKR0026](#)), written evidence from Ofqual ([UKR0062](#)), written evidence from the Professional Standards Authority ([UKR0066](#)), written evidence from South West Water ([UKR0068](#)), written evidence from Microsoft ([UKR0074](#)), written evidence from UK Finance ([UKR0075](#)), written evidence from Ofcom ([UKR0081](#)), written evidence from the Charity Commission ([UKR0083](#))

87 Written evidence from the Financial Conduct Authority ([UKR0039](#)); written evidence from the Information Commissioner’s Office ([UKR0058](#))

88 Written evidence from the Competition and Markets Authority ([UKR0079](#))

89 Written evidence from the Health and Safety Executive ([UKR0082](#))

90 Written evidence from the Department for Education ([UKR0090](#))

91 Written evidence from the Regulatory Reform Group ([UKR0078](#))

of the time”. However, she noted that “independence is as much a matter of culture and behaviours ... as it is formal powers, and is in a constant process of negotiation”.<sup>92</sup>

56. Professor Robin Ellison, Chair of the College of Lawmakers<sup>93</sup>, suggested that in practice, regulatory independence is “often simply notional”.<sup>94</sup> Unchecked UK said that regulators in different sectors “have voiced mounting concerns about political interference, which is undermining clarity and causing confusion”, arguing that “reinforcing the independence of regulatory bodies ... can rebuild public trust”.<sup>95</sup> Citizens Advice agreed that “operational independence of regulators is essential” and is “critical for trust in the regulator from all stakeholders”.<sup>96</sup>
57. Some witnesses expressed concern at the Government taking more powers to interfere with regulators’ processes. John Penrose MP said that some of these powers were included in the Digital Markets, Competition and Consumers Bill<sup>97</sup>, arguing that if it becomes “too much of a habit” for “the Secretary of State ... to sign off on, for example, CMA guidance”, then this will increase “the number of points of access for lobbyists”, potentially “eroding arms-length political certainty”.<sup>98</sup>
58. The Care Quality Commission (CQC) explained that the Health and Care Act 2022 had added to its responsibilities and included a requirement for its methodology to be approved by the Secretary of State, setting “a precedent and a move away from independence for this element of our work”.<sup>99</sup> techUK expressed similar concerns at powers the Government has taken with regard to Ofcom.<sup>100</sup> National Grid said that the Government has been granted powers to make changes to energy licences regulated by Ofgem and to give directions to licence holders, which they believed “lack specificity, are not appropriately time bound and require clarification as to how and when they will be used”.<sup>101</sup>
59. Energy UK expressed its concern that “recent years have seen a lessening of the independence of regulatory bodies, as political statements and media coverage guide regulation as much as official documents”. The trade body acknowledged that numerous crises in recent years had led to a “necessary ... shift towards more reactive approaches to regulation” but said that this “must not become business as usual”.<sup>102</sup> Nicola Smith, Head of Rights, Social and Economics Department at the Trades Union Congress (TUC),

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92 Written evidence from Professor Julia Black ([UKR0034](#))

93 Professor Ellison provided an evidence submission in a personal capacity, but stated that “in many cases it reflects the opinion of colleagues who have preferred not to be named, but have similar if not identical views.” Written evidence from Professor Robin Ellison ([UKR0005](#))

94 Written evidence from Professor Robin Ellison ([UKR0005](#)). See also written evidence from John Picton ([UKR0013](#)), written evidence from Hoxton Farms ([UKR0016](#)), written evidence from Prospect ([UKR0029](#)), written evidence from Sustainability First ([UKR0032](#)), written evidence from Blueprint for Water ([UKR0064](#))

95 Written evidence from Unchecked UK ([UKR0011](#))

96 Written evidence from Citizens Advice ([UKR0063](#))

97 [Digital Markets, Competition and Consumers Bill](#) [HL], [Bill 12 (2022–23, 2023–24)]

98 [Q 40](#) (John Penrose MP)

99 Written evidence from the Care Quality Commission ([UKR0030](#)). See also Health and Care Act 2022, [Section 31](#) and [Section 163](#)

100 Written evidence from techUK ([UKR0077](#)), written evidence from National Grid ([UKR0084](#))

101 Written evidence from National Grid ([UKR0084](#))

102 Written evidence from Energy UK ([UKR0061](#))

complained that effective labour market regulation is “being hampered by political interference”.<sup>103</sup>

60. The Institute of Regulation argued that independence is “variable and contingent on the specific legislation which established the individual regulator and the nature of their statutory relationship with the Government”.<sup>104</sup> The Institute for Government suggested that it is “difficult to answer” how independent the UK’s regulators are, “except on a case by case basis”.<sup>105</sup>
61. **Many regulators were keen to stress their independence from the Government. In practice, however, the level of independence of the UK’s regulators varies, and there are concerns in some quarters at the Government’s ability to interfere in some of their operations. Where regulators are insufficiently independent, or perceived as such, it undermines their ability to regulate objectively, free from undue political influence and accountable to the public interest. This results in a loss of trust on the part of both consumers and regulated entities.**

### Strategic guidance and the boundaries of independence

#### *Differentiating between policy and regulation*

62. The Institute for Government stressed that “it is important to distinguish between strategic and operational independence”, concepts which “attempt to define the inherently blurred lines between decisions that are properly for ministers and those that are properly for officials and agencies”.<sup>106</sup> The CAA noted that “a careful balance must be drawn between the necessity of independent regulation on individual decisions, and the need for democratically elected governments to set the broad policy framework for how those trade-offs should be made”.<sup>107</sup>
63. David Mendes da Costa, Principle Policy Manager at Citizens Advice, said that “it is hard sometimes to separate problems into regulatory problems on the one side and social policy on the other side”, emphasising that regulators “do not want to be seen to be doing” social policy. He said that some matters, such as affordability and accessing goods and services, “cross over the boundary” between the two.<sup>108</sup> The Consumer Council for Water agreed on the “lack of clarity about whether social policy falls into regulators’ or government responsibility”, leading to “a lack of substantive progress to address affordability concerns”.<sup>109</sup>
64. Cadent Gas noted that Ofgem has been put under “significant pressure” over its operation of the energy price cap and energy bills, noting the difficulty of maintaining independence “with the advent of social media and a 24/7 press presence”. Cadent suggested that “regulators are understandably nervous about making decisions that may be highly controversial or consequential without strong government guidance”, which “can lead to risk-aversion, inertia or inaction”.<sup>110</sup>

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103 [Q 31](#) (Nicola Smith)

104 Written evidence from the Institute of Regulation ([UKR0028](#))

105 Written evidence from the Institute for Government ([UKR0006](#))

106 Written evidence from the Institute for Government ([UKR0006](#))

107 Written evidence from the Civil Aviation Authority ([UKR0015](#))

108 [Q 33](#) (David Mendes da Costa)

109 Written evidence from the Consumer Council for Water ([UKR0026](#))

110 Written evidence from Cadent Gas ([UKR0067](#))

65. Gareth Davies outlined the NAO’s view that there is “scope for Government to have a clearer framework for making decisions on the degree of independence in each case”, while the Institute for Government called for the Government to “precisely determine what it is delegating and what it is not, and stick to it”.<sup>111</sup> Other witnesses agreed on the need for “a clearer delineation” between independent decisions for regulators and those on which politicians should express a view.<sup>112</sup>

*Strategic guidance*

66. Stuart Hudson said that “from the earliest days of UK sectoral regulation, there was an acceptance in Whitehall that regulators’ independence would have to be tempered to minimise the risk of conflict between ministerial policy and the regulator”. He explained that “over time, the practice developed of the Government publishing a non-binding ‘strategic steer’” to help resolve this issue.<sup>113</sup>
67. Many regulators now receive a strategic steer, strategic policy statement or remit letter, setting out the Government’s priorities in the areas they are responsible for. The CMA explained that it “has regard to this steer when we set our strategy and when we make decisions on our priorities, although the final decision is taken by the CMA”.<sup>114</sup>
68. Sir John Armitt, Chair of the NIC, argued that “it is very important that government gives the regulator very clear direction on what is strategically important”, as it “cannot be right” for regulators to make “fundamental strategic policy decisions”. He said that “without that clear direction, you are putting the regulator in an impossible position”.<sup>115</sup>
69. The Regulatory Reform Group said that “there has yet been no attempt to standardise regulatory direction, which varies significantly” across different departments and regulators, a point echoed by the Institute for Regulation.<sup>116</sup> The Institute for Government noted that strategic guidance to regulators “can vary in form ... from broad policy priorities, such as the Business Secretary’s open letter to the utilities regulators in January 2022, to micro-managerial interventions like the multiple, specific letters sent each year to the Office for Students”.<sup>117</sup>
70. John Penrose MP said that strategic direction is “at least a way of trying to formalise” government intervention “and make it less frequent, more black-and-white and more transparent, which is good”. However, he stressed that this mechanism “is not always used, and when it is, it tends to be a densely worded, largely impenetrable ... letter, which sits on top of the statutory duties”.<sup>118</sup> Sir John Armitt agreed that “strategic guidance could be a lot better”.<sup>119</sup>

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111 [Q 3](#) (Gareth Davies), written evidence from the Institute for Government ([UKR0006](#))

112 Written evidence from Stuart Hudson ([UKR0003](#)) and written evidence from the Financial Inclusion Centre ([UKR0087](#))

113 Written evidence from Stuart Hudson ([UKR0003](#))

114 Written evidence from the Competition and Markets Authority ([UKR0079](#))

115 [Q 93](#) (Sir John Armitt)

116 Written evidence from the Regulatory Reform Group ([UKR0078](#)) and the Institute of Regulation ([UKR0028](#))

117 Written evidence from the Institute for Government ([UKR0006](#))

118 [Q 42](#) (John Penrose MP)

119 [Q 94](#) (Sir John Armitt)

71. The frequency of strategic guidance also varies. The Department for Environment, Food and Rural Affairs (DEFRA) left an interval of five years between its last two Strategic Policy Statements for Ofwat.<sup>120</sup> The Government has had the power to provide Ofgem with a Strategy and Policy Statement since 2013<sup>121</sup> but has not yet finalised such a statement, only consulting on a draft in May 2023.<sup>122</sup> In contrast, HM Treasury has sent the FCA remit letters on three occasions in the last five years.<sup>123</sup>
72. The think-tank Sustainability First suggested that the Government’s draft Strategy and Policy Statement for Ofgem “failed to address the issue of how trade-offs should be decided” and “ducked the strategic issue of the balance between the roles of the welfare state and help for poorer customers through regulatory approaches”.<sup>124</sup>
73. Water UK said that Ofwat’s Strategic Policy Statement provides “no guidance” as to how competing goals should be prioritised<sup>125</sup>, with the Consumer Council for Water calling for the Government to be “clearer about what takes precedent” in the event of conflicts.<sup>126</sup> Several other witnesses argued in favour of the Government providing clearer strategic guidance to regulators, particularly in the utilities sectors.<sup>127</sup>
74. South West Water contended, however, that “providing too much guidance could be detrimental to the right outcome”, as “greater specificity may not allow the regulatory framework to adapt to delivery policy in the best way for customers”.<sup>128</sup> Ofsted suggested that “regulators should be given more freedom to determine how best to achieve priorities”, as “competing government priorities in the same area can be challenging”.<sup>129</sup> The Food Standards Agency said that it does not receive sector-specific guidance and does not believe “such a statement would be necessary or appropriate”.<sup>130</sup>
75. UK Finance posited that issuing remit letters to the financial regulators “at least once in each Parliament ... strikes the right balance”, suggesting that

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120 Department for Environment, Food and Rural Affairs, *Strategic policy statement for Ofwat* (updated March 2022): <https://www.gov.uk/government/publications/strategic-policy-statement-to-ofwat-incorporating-social-and-environmental-guidance> [accessed 9 January 2024]

121 Energy Act 2013, [Part 5](#)

122 Department for Energy Security and Net Zero, *Strategy and Policy Statement for energy policy in Great Britain* (May 2023): <https://www.gov.uk/government/consultations/strategy-and-policy-statement-for-energy-policy-in-great-britain> [accessed 9 January 2024]

123 HM Treasury, *Recommendations for the Financial Conduct Authority: 2017 to 2019 Parliament* (November 2019): <https://www.gov.uk/government/publications/recommendations-for-the-financial-conduct-authority-2017-to-2019-parliament> [accessed 9 January 2024]; HM Treasury, *Recommendations for the Financial Conduct Authority: March 2021* (March 2021): <https://www.gov.uk/government/publications/recommendations-for-the-financial-conduct-authority-march-2021> [accessed 9 January 2024]; HM Treasury, *Recommendations for the Financial Conduct Authority: December 2022* (December 2022): <https://www.gov.uk/government/publications/recommendations-for-the-financial-conduct-authority-december-2022> [accessed 9 January 2024]

124 Written evidence from Sustainability First ([UKR0032](#))

125 Written evidence from Water UK ([UKR0092](#))

126 Written evidence from the Consumer Council for Water ([UKR0026](#))

127 [Q 33](#) (David Mendes da Costa), written evidence from the Institute of Regulation ([UKR0028](#)), written evidence from the Global Infrastructure Investors Association ([UKR0050](#)), written evidence from the Energy Networks Association ([UKR0060](#)), written evidence from Energy UK ([UKR0061](#)), written evidence from Blueprint for Water ([UKR0064](#)), written evidence from Cadent Gas ([UKR0067](#)), written evidence from Microsoft ([UKR0074](#)), written evidence from techUK ([UKR0077](#)), written evidence from National Grid ([UKR0084](#))

128 Written evidence from South West Water ([UKR0068](#))

129 Written evidence from Ofsted ([UKR0038](#))

130 Written evidence from the Food Standards Agency ([UKR0085](#))

“there is a risk that greater frequency could start to erode stability and ... independence as government becomes more actively involved in directing their short-term priorities”.<sup>131</sup>

76. Dr Andreas Kokkinis, Associate Professor in Law at the University of Birmingham, argued that decisions between different objectives “would best be decided in primary legislation”. He said that doing so “should not be left to the Government of the day, as it would undermine regulatory independence and open up a route for the Government to micro-manage regulatory outcomes”.<sup>132</sup> James Heath, Chief Executive of the NIC, said that strategic guidance “is not a substitute for statute. It is there to supplement and complement”.<sup>133</sup>
77. DBT’s written evidence referred to its consultation on strengthening economic regulation. This consultation described strategic statements as “key documents for communicating government priorities and retaining independent economic regulation”, adding that the Government’s 2019 Statement of Strategic Priorities for Ofcom “has been highlighted as a good example of the Government setting clear prioritisation of growth and investment”. The consultation contended that this contrasted with the energy sector, where “the legal framework underpinning the strategic statement means it can only be descriptive, not directive, and therefore cannot set a prioritisation of duties for Ofgem”.<sup>134</sup>

#### *Requesting strategic decisions*

78. Sir John Armitth suggested that regulators should be able to ask the Government for direction when they are “not very clear” about making trade-offs.<sup>135</sup> techUK similarly called for “clear routes for the regulators and industry to seek a policy statement from the Government ... where regulatory duties conflict”.<sup>136</sup>
79. The Institute for Government noted that “Ofgem tried to obtain guidance from government over some years” over whether it should effectively cross-subsidise some customers in financial difficulty or whether the Government should resolve the issue, which “came to a head during the energy crisis ... and Ofgem was criticised for its approach”.<sup>137</sup>
80. In its October 2019 report on Strategic Investment and Public Confidence, the NIC recommended that regulators’ boards should be given the power “to seek explicit guidance from ministers on strategic policy direction and distributional choices, against a menu of feasible options provided by the

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131 Written evidence from UK Finance ([UKR0075](#))

132 Written evidence from Dr Andreas Kokkinis ([UKR0053](#))

133 [Q 95](#) (James Heath)

134 Department for Business and Trade, *Smarter regulation: strengthening the economic regulation of the energy, water and telecoms sectors* (November 2023): <https://www.gov.uk/government/consultations/smarter-regulation-strengthening-the-economic-regulation-of-the-energy-water-and-telecoms-sectors> [accessed 12 January 2024]

135 [Q 94](#) (Sir John Armitth)

136 Written evidence from techUK ([UKR0077](#))

137 Written evidence from the Institute for Government ([UKR0006](#))

regulator and within a fixed three-month period”.<sup>138</sup> The Government responded that it did not support the creation of such a mechanism.<sup>139</sup>

81. **There is a trade-off between the operational independence of regulators and the need for governments to provide them with strategic advice, especially in areas where it is difficult to distinguish between regulatory issues and policy issues. In these cases, it is preferable that clarity is provided through statutory duties and objectives, but in the absence of this clarity, the Government can usefully provide input through strategic steers or policy statements.**
82. *When setting up new regulators or conducting reviews of existing ones, the Government should state clearly what it has delegated to regulators to decide independently, and in which areas it will be appropriate for the Government to provide direction. The Government should then adhere to this delineation. If the Government is not content that a responsibility has been delegated, it should legislate to end this delegation, rather than attempting to influence regulators’ decisions.*
83. **The Government’s strategic steers and policy statements to regulators often do not provide adequate clarity on how to make trade-offs between their objectives, especially in relation to political and distributional issues, such as balancing the affordability of utility bills with the need for future investment. They are often overly detailed and give no sense of priority between different objectives or areas, which does little to provide clarity.**
84. **The Government must not duck responsibility by delegating political or distributional decisions to regulators without clear objectives or any sense of priority.**
85. ***The Government should ensure that it provides a strategic steer or policy statement to any regulator facing political or distributional trade-offs in its duties and objectives. These documents should be clear, concise and provide high-level guidance on how to prioritise between any duties or objectives that may conflict. We see merit in such guidance being issued once a Parliament, while noting the need for there to be flexibility in the face of urgent issues or crises.***
86. *Regulators’ boards should be given the power to seek explicit guidance from the Government on strategic policy direction and distributional choices. The Government should bring forward proposals for a specific mechanism to achieve this.*

### Appointments

87. The Government plays a role in the appointment of regulatory boards and some senior executive staff as part of the public appointments process. Through this process, an Advisory Assessment Panel, which is usually comprised of a

138 National Infrastructure Commission, *Strategic Investment and Public Confidence* (October 2019): <https://nic.org.uk/app/uploads/NIC-Strategic-Investment-Public-Confidence-October-2019.pdf> [accessed 21 December 2023]

139 HM Treasury, *Response to the Regulation Study: Strategic Investment and Public Confidence* (November 2020): [https://assets.publishing.service.gov.uk/media/5fbd51bd8fa8f559e133086a/Government\\_Response\\_to\\_the\\_Regulation\\_Study\\_Strategic\\_Investment\\_and\\_Public\\_Confidence\\_FINAL\\_.pdf](https://assets.publishing.service.gov.uk/media/5fbd51bd8fa8f559e133086a/Government_Response_to_the_Regulation_Study_Strategic_Investment_and_Public_Confidence_FINAL_.pdf) [accessed 21 December 2023]

senior official from the sponsoring department, a representative of the public body in question and an independent member, will review applications, hold interviews, and submit their assessment of whether candidates have met the criteria and are “appointable” to the role. Following this, the relevant minister makes a final decision on who to appoint.<sup>140</sup>

88. Dame Meg Hillier MP emphasised that “a good non-executive body is absolutely critical, because they have that level of independence and can be really honest”.<sup>141</sup> Phoenix Group also emphasised the “critical role” of boards in providing accountability for the performance of regulators.<sup>142</sup>
89. Michael Gibbons of Bluefield Solar Income Fund said that “the culture and tone are normally set from the top, in particular by the Chair and Chief Executive”, emphasising the need for those appointments “to ensure that the independence of such organisations is underpinned”.<sup>143</sup>
90. Charles Randell noted that in 2021, the outgoing Commissioner for Public Appointments, Peter Riddell, had “highlighted serious problems in the way that Ministers and their advisers engage with the appointments process, including delays ... [and] efforts to promote political allies by leaking Ministerial preferences”.<sup>144</sup>
91. Dame Meg Hillier MP raised concerns that independent board members are often “very close to the current party in government”. She agreed that calling for the Government to explain why it is rejecting appointable candidates was “a good suggestion”.<sup>145</sup>
92. Prof Ellison raised the case of a Pensions Minister, who “refused to re-appoint a highly-regarded and experienced” Chair of TPR, “who was too independently minded”.<sup>146</sup>
93. Marcus Bokkerink, Chair of the CMA, said that it is very important that appointees “are not ideological and do not have a certain extreme leaning, including politically”. He said that in his experience, “so far, it has been fine”.<sup>147</sup>
94. In its report on the work of the OfS, this Committee expressed its concern that the perception of the regulator’s independence from the Government had “not been aided” by its Chair continuing to take the whip of the governing party in the House of Lords. We recommended that “serving politicians should resign any political party whip before becoming the Chairs of independent regulators” and that the Government should consider

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140 Cabinet Office, ‘Public appointments’ (updated July 2023): <https://www.gov.uk/guidance/public-appointments> [accessed 22 December 2023]

141 [Q 58](#) (Dame Meg Hillier MP)

142 Written evidence from Phoenix Group ([UKR0069](#))

143 [Q 24](#) (Michael Gibbons)

144 Written evidence from Charles Randell ([UKR0002](#)). Cites Peter Riddell, Pre-Valedictory speech to the University College London Constitution Unit on Public Appointments, 29 April 2021: <https://publicappointmentscommissioner.independent.gov.uk/pre-valedictory-speech-to-the-ucl-constitution-unit-on-public-appointments/> [accessed 19 December 2023]

145 [Q 55](#) (Dame Meg Hillier MP)

146 Written evidence from Professor Robin Ellison ([UKR0005](#))

147 [Q 73](#) (Marcus Bokkerink)

making this a requirement.<sup>148</sup> The Government’s response stated that it had “no plans” to enact such a change.<sup>149</sup>

### *Role of Parliament*

95. For some appointments, including the chairs of several regulators, there is also a need to attend a pre-appointment hearing with a House of Commons select committee. Pre-appointment scrutiny by select committees has been part of the public appointments process since 2008.<sup>150</sup>
96. The Government assesses whether posts should be subject to pre-appointment scrutiny based on whether they play a key role in regulating government action, including by safeguarding the public’s rights and interests in relation to government action, or where it is “vital for the reputation and credibility of that organisation that the post holder is, and is seen to act, independently of Ministers and the Government”.<sup>151</sup> This is ultimately at the Government’s discretion; some senior regulatory officials are currently appointed without a pre-appointment hearing.
97. In most cases, the Government expects that “such posts will be the chair of the board of an organisation”. Any changes to those posts subject to pre-appointment scrutiny “must be agreed between the appointing Secretary of State, the relevant select committee chair and the Cabinet Office”. According to the Government’s guidance on pre-appointment scrutiny, “In cases where there is disagreement about whether an appointment should be added to the list, the relevant select committee may consult the Liaison Committee and the Cabinet Office.”<sup>152</sup>
98. Dr Kokkinis noted that between July 2007 and December 2017, 96 pre-appointment hearings were held with nominees for public appointments. He explained that the select committee made a negative recommendation “only on five occasions ... and out of these instances in three cases the

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148 Industry and Regulators Committee, *Must do better: the Office for Students and the looming crisis facing higher education* (2nd Report, Session 2022–23, HL Paper 246)

149 Department for Education, ‘Government response to the Committee’s report, ‘Must do better: the Office for Students and the looming crisis facing higher education’ (27 November 2023): <https://committees.parliament.uk/publications/42319/documents/210422/default/>

150 Cabinet Office, *Pre-appointment scrutiny by House of Commons select committees* (updated January 2019): <https://www.gov.uk/government/publications/pre-appointment-scrutiny-by-house-of-commons-select-committees> [accessed 22 December 2023]

151 Cabinet Office, *Pre-appointment scrutiny by House of Commons select committees* (updated January 2019): <https://www.gov.uk/government/publications/pre-appointment-scrutiny-by-house-of-commons-select-committees> [accessed 22 December 2023]

152 Cabinet Office, *Pre-appointment scrutiny by House of Commons select committees* (updated January 2019): <https://www.gov.uk/government/publications/pre-appointment-scrutiny-by-house-of-commons-select-committees> [accessed 22 December 2023]

appointment was made in any case”.<sup>153</sup> More recently, in 2018<sup>154</sup> and 2022<sup>155</sup> the Government confirmed the appointments of two Chairs of the Charity Commission despite reports from the relevant select committee that did not endorse the two candidates.<sup>156</sup>

99. The Government’s guidance suggests that where the select committee’s report raises concerns and the Minister is “minded to proceed” with the appointment, the Minister should write to the Chair setting out their position and “explaining their overall decision”.<sup>157</sup>
100. Dame Meg Hillier MP noted that while there are confirmatory hearings, “there is no veto by committees”. She also emphasised that some candidates “might be brilliantly technically expert in their area but perhaps not great public performers”, and that committees may “make a judgement on someone sat in front of them in a committee, which might not be as fair or robust” as an appointments process.<sup>158</sup>
101. Dr Kokkinis argued that there is an “urgent need for greater parliamentary oversight of appointments ... to ensure sufficient independence from government”, a point echoed by Dr John Picton, Reader in Law at the University of Manchester.<sup>159</sup> Stuart Hudson suggested that pre-appointment hearings should be extended to include the nominees for Chief Executives of regulators as well as Chairs, “given the extent to which Chief Executives are able to influence the direction that an agency takes”.<sup>160</sup>
102. John Penrose MP said that there is “absolutely a point about Parliament taking a view on the suitability of senior appointments”, but stressed that “it is hard for Parliament to balance” the fact that these are independent roles, “because it needs to behave in quite a non-tribal way”, putting aside “the day-to-day cut and thrust of party politics”.<sup>161</sup> Dame Patricia Hodgson, formerly of Ofcom, highlighted that “however good select committees are, they are composed of politicians with interests”.<sup>162</sup>

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153 Written evidence from Dr Andreas Kokkinis ([UKR0053](#)). Cites House of Commons Library, Pre-appointment hearings, Briefing Paper Number [04387](#), December 2017. The following appointments were made despite the relevant Select Committee publishing a report that refused to endorse the candidate: Children’s Commissioner for England in 2009; Director of the Office for Fair Access in 2012; and HM Chief Inspector, Office for Standards in Education in 2016. Appointments to the posts of HM Chief Inspector of Probation in 2011 and the Chair of Monitor in October 2013 were not taken forward following such reports.

154 Department for Digital, Culture, Media and Sport, Press Release: Secretary of State Appoints Charity Commission Chair on 1 March 2018: <https://www.gov.uk/government/news/secretary-of-state-appoints-charity-commission-chair> [accessed 10 January 2024]

155 Department for Digital, Culture, Media and Sport, Press Release: Orlando Fraser is confirmed as the new Charity Commission Chair on 1 April 2022: <https://www.gov.uk/government/news/orlando-fraser-is-confirmed-as-the-new-charity-commission-chair> [accessed 10 January 2024]

156 Digital, Culture, Media and Sport Committee, *Appointment of the Chair of the Charity Commission* (Third report, Session 2017–19, HC 509); Digital, Culture, Media and Sport Committee, *Another pre-appointment hearing for Chair of the Charity Commission* (Tenth report, Session 2021–22, HC 1200)

157 Cabinet Office, *Pre-appointment scrutiny by House of Commons select committees* (updated January 2019): <https://www.gov.uk/government/publications/pre-appointment-scrutiny-by-house-of-commons-select-committees> [accessed 22 December 2023]

158 [Q 55](#) (Dame Meg Hillier MP)

159 Written evidence from Dr Andreas Kokkinis ([UKR0053](#)). See also written evidence from Dr John Picton ([UKR0013](#))

160 Written evidence from Stuart Hudson ([UKR0003](#))

161 [Q 40](#) (John Penrose MP)

162 [Q 69](#) (Dame Patricia Hodgson)

103. Dame Meg Hillier MP suggested that scrutinising appointments is “quite time consuming” and that “there is a danger that you stretch the legislature and the scrutiny function too thin if you load more on Parliament”.<sup>163</sup> We discuss the resourcing of parliamentary scrutiny of regulators further in Chapter 3.

104. **The independence of regulators can be affected by the process of appointing or re-appointing senior staff and board members. We are concerned at the perception that the appointment and reappointment of some regulatory leaders reflects their political loyalties more than their suitability for the role. Similar concerns apply where senior staff or board members have not been reappointed because of differences with the government of the day.**

The section is interesting for what it doesn't say - there is no discussion around relevant expertise and experience that might be expected for appointment to a regulatory board or executive role.

105. **Given these concerns, it would be desirable for select committees to play a greater role in scrutinising public appointments to regulatory positions. While some regulatory appointments are subject to pre-appointment hearings and scrutiny, this is not the case for all appointments and varies between regulators. It is also concerning that the Government has taken regulatory appointments forward in cases where the relevant select committee has refused to endorse a candidate.**

106. *Where a public appointment to the Chair or Chief Executive of a regulator is not currently subject to pre-appointment scrutiny by a select committee, and a select committee requests that pre-appointment scrutiny is extended to it, the Government should grant the request.*

107. *Where the Government decides not to reappoint the Chair or Chief Executive of a regulator, it should publish its explanation for this. Where the Government chooses to appoint a candidate who has not been endorsed by the relevant select committee, it should also publish why it has done so.*

#### *Delays to appointments*

108. Gareth Davies said that “one of the loudest messages” the NAO receives from regulators is “their collective and individual frustration on the time that it takes to fill vacancies on their non-executive boards ... so much so that that has become a piece of NAO work”. He stressed that this is “having quite a serious effect on the governance of those organisations”.<sup>164</sup>

109. Dame Patricia Hodgson said that she had heard that “board appointments can take six to nine months”. She warned that “this loses an enormous amount of talent”, questioning whether “able people” will “really sit around, putting their lives on hold, for that length of time”. She said that this delay “is because more processes have been inserted into appointments”, including the involvement of the Cabinet Office, but that “it varies between departments”.<sup>165</sup>

110. Marcus Bokkerink said that “delay after delay can happen in that process”, which “is obviously concerning, and it is a vulnerability that can become a risk to operations”. He explained that the CMA’s board has “a quorum that

163 [Q 55](#) (Dame Meg Hillier MP)

164 [Q 3](#) (Gareth Davies)

165 [Q 61](#) (Dame Patricia Hodgson)

we need to make decisions”, and that they had experienced “situations where it is really close to the wire” as a result of delays to appointments.<sup>166</sup>

111. **It is unacceptable that appointments to regulators’ boards have been beset by delays. This hampers the governance of regulators and makes these positions less attractive due to the length of time it takes to be confirmed.**
112. ***The Government must make more timely appointments to regulators’ boards. In its response to this report, the Government should set out why it believes these delays are taking place and what actions it intends to take to rectify the situation. Where the Government takes more than three months to fill a position on a regulator’s board, it should publish an explanation for the delay.***

*Board governance reviews*

113. The Government’s *Corporate governance in central government departments: code of good practice* sets out the role of the boards of government departments. Some regulators, such as the CMA, Ofwat and Ofgem, are classified as non-ministerial departments, and are therefore subject to this guidance.<sup>167</sup>
114. Under the code of good practice, the board of a department should “document the board’s role and responsibilities in a board operating framework”, which should be “reviewed and updated from time to time, and at least every two years”. In line with this and by way of example, the CMA Board’s rules of procedures set out that the Chair will “ensure a review of the effectiveness of the Board and its committees is carried out annually, with independent input at least once every three years.”<sup>168</sup> The consultancy Campbell Tickell are currently conducting an external review of the CMA’s board, in line with these rules.<sup>169</sup>
115. We did not take evidence on the effectiveness of such reviews, or whether they are routine in other regulators. However, several witnesses highlighted the broader importance of regulators’ boards in setting their strategic direction and holding them to account internally.<sup>170</sup>
116. ***The boards of regulators, including their non-executive directors, play a key role in setting their strategic direction and holding their executives to account. We therefore welcome that the Competition and Markets Authority conducts regular reviews of the work of its Board, on both an internal and an external basis. Where they do not do so already, regulators should commission and publish independent reviews of the work and governance of their boards every three years.***

166 Q 73 (Marcus Bokkerink)

167 HM Treasury, Cabinet Office, *Corporate governance in central government departments* (April 2017): [https://assets.publishing.service.gov.uk/media/5a747d24e5274a7f9902893d/PU2077\\_code\\_of\\_practice\\_2017.pdf](https://assets.publishing.service.gov.uk/media/5a747d24e5274a7f9902893d/PU2077_code_of_practice_2017.pdf) [accessed 17 January 2024]

168 Competition and Markets Authority, *Board Rules of Procedure* (1 October 2013): <https://www.gov.uk/government/publications/cma-board-rules-of-procedure/board-rules-of-procedure> [accessed 17 January 2024]

169 Competition and Markets Authority, *CMA board meeting minutes: 22 November 2023* (27 December 2023): <https://www.gov.uk/government/publications/cma-board-meeting-minutes-22-november-2023/cma-board-meeting-minutes-22-november-2023#fn:1> [accessed 17 January 2024]

170 Q 83 (Marcus Bokkerink), written evidence from the Payment Systems Regulator (UKR0055), written evidence from Phoenix Group (UKR0069), written evidence from Ofcom (UKR0081)

## CHAPTER 4: RESOURCES AND SKILLS

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### Resources

117. Prospect, the trade union, told us that “one of the most important factors determining the effective independence of regulators is resourcing”.<sup>171</sup> Some regulators are funded directly by the Government. For instance, the HSE “is funded by and accountable to Ministers and Government”<sup>172</sup> and the Charity Commission noted that its “funding settlement is negotiated directly with HM Treasury”.<sup>173</sup>
118. Other regulators are funded through levies, fees or charges on the industries that they regulate, or those using their permits or services. The CQC explained that it “is one of the few regulators funded through fees”.<sup>174</sup> The FCA said that it can set its own resourcing requirements, “through levies paid by the firms we regulate”.<sup>175</sup>
119. A combination of these methods is used to fund some regulators. For instance, the ICO is funded partly by “a fee paid by eligible organisations”, alongside a grant-in-aid from the Government for its work under particular pieces of legislation.<sup>176</sup>
120. The NAO’s Gareth Davies said that “a big test of whether an organisation has been made genuinely independent is whether it has the ability to access the resources that it needs to deliver its objectives”.<sup>177</sup> Ofsted argued that the means of funding a regulator will “have a profound effect on their independence and the balance of responsibilities between government and that regulator”.<sup>178</sup>
121. Charles Randell, the former FCA Chair, noted the “enormous differences between the regulators that have taxing powers and those that do not”. He explained that the major financial regulators “are able to levy the industry for their costs”, giving them “a measure of autonomy” in raising their budgets. He contrasted this with the Gambling Commission and the Environment Agency, where “central government can, in effect, starve the regulator of the resources it needs to do the job”. He described this as “a fundamental problem” for some regulators.<sup>179</sup>
122. Several submissions raised concerns about the resources available to regulators and the subsequent impacts of this, including in relation to environmental, pharmaceutical, financial, food safety and labour market

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171 Written evidence from Prospect ([UKR0029](#))

172 Written evidence from the Health and Safety Executive ([UKR0082](#))

173 Written evidence from the Charity Commission ([UKR0083](#))

174 Written evidence from the Care Quality Commission ([UKR0030](#))

175 Written evidence from the Financial Conduct Authority ([UKR0039](#))

176 Written evidence from the Information Commissioner’s Office ([UKR0058](#))

177 [Q 3](#) (Gareth Davies)

178 Written evidence from Ofsted ([UKR0038](#))

179 [Q 17](#) (Charles Randell)

regulators.<sup>180</sup> Unchecked UK said that “severe budget reductions ... have led to a worrying enforcement gap”.<sup>181</sup>

123. Industry submissions suggested that “creaking regulatory capacity” had limited regulators’ ability to “offer a predictable and quality service”, hampered their ability to make decisions “in a timely fashion” and constrained investment and innovation.<sup>182</sup> Virginia Acha of MSD argued that industry needs “a referee who can keep up with the ball”, which “requires investment and support, both from the Government and through the funding arrangements”. She stressed that resource challenges within the Medicines and Healthcare Products Regulatory Agency (MHRA) had caused “considerable delays in clinical trial applications”.<sup>183</sup>
124. Witnesses noted that regulators have taken on new functions and responsibilities following the UK’s exit from the EU, but that “resource has not increased commensurately”.<sup>184</sup> Dame Meg Hillier MP, Chair of the Public Accounts Committee, suggested that if regulators “are asked to extend their remit, they need to be clear that they have the resources to deliver that”.<sup>185</sup> David Mendes da Costa of Citizens Advice gave the example of Ofcom, which has “received all the responsibilities of the Online Safety Act on top of looking at the spectrum, broadband, mobile, broadcast and post”. He argued that “as the brief gets larger, and often resources are not stepped up to account for the larger brief, issues might get prioritised down the list”.<sup>186</sup>
125. Unchecked UK submitted that “relatively small investments ... would be transformative and deliver significant returns”. techUK said that additional skills and resources would “ensure that regulators are effectively equipped to deal with the higher levels of demands placed on them, and ensure they are able to act in a timely manner when necessary”.<sup>187</sup> A number of other witnesses also argued in favour of increasing the resources available for regulators.<sup>188</sup>
126. Dame Patricia Hodgson, a former Chair of Ofcom, stressed that Ofcom’s ability to “raise resources from the sector it regulates” is “enormously

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180 Written evidence from Unchecked UK ([UKR0011](#)), written evidence from Hoxton Farms ([UKR0016](#)), written evidence from the Association of the British Pharmaceutical Industry ([UKR0020](#)), written evidence from Civil Society Alliance ([UKR0021](#)), written evidence from Prospect ([UKR0029](#)), written evidence from Sustainability Alliance ([UKR0032](#)), written evidence from Surfers Against Sewage ([UKR0033](#)), written evidence from Wildlife and Countryside Link ([UKR0036](#)), written evidence from Form Ventures ([UKR0042](#)), written evidence from Myenergi ([UKR0045](#)), written evidence from Trades Union Congress ([UKR0047](#)), written evidence from Blueprint for Water ([UKR0064](#)), written evidence from UK Finance ([UKR0075](#)), written evidence from techUK ([UKR0077](#))

181 Written evidence from Unchecked UK ([UKR0011](#))

182 Written evidence from the Association of the British Pharmaceutical Industry ([UKR0020](#)), written evidence from Form Ventures ([UKR0042](#)) and written evidence from UK Finance ([UKR0075](#))

183 [QQ 23–24](#) (Virginia Acha)

184 Written evidence from Prospect ([UKR0029](#)), written evidence from Professor Julia Black ([UKR0034](#)), written evidence from Form Ventures ([UKR0042](#)) and written evidence from Cadent Gas ([UKR0067](#))

185 [Q 59](#) (Dame Meg Hillier MP)

186 [Q 37](#) (David Mendes da Costa)

187 Written evidence from techUK ([UKR0077](#))

188 [Q 23](#) (Virginia Acha), written evidence from Unchecked UK ([UKR0011](#)), written evidence from Hoxton Farms ([UKR0016](#)), Association of the British Pharmaceutical Industry ([UKR0020](#)), written evidence from Prospect ([UKR0029](#)), written evidence from Form Ventures ([UKR0042](#)), written evidence from Trades Union Congress ([UKR0047](#)), written evidence from Blueprint for Water ([UKR0064](#)), written evidence from Cadent Gas ([UKR0067](#)), written evidence from techUK ([UKR0077](#))

important”. She contrasted this with Ofwat, Ofgem and the CMA, whose resources “can be limited by the annual spending round”.<sup>189</sup>

127. Marcus Bokkerink, however, suggested that being funded by the Government “does not impact” the CMA’s independence, explaining that he does “not see how it could”. He emphasised that the Government attaching conditions to funding “could not happen” and that if it did, he would “point it out and would not hesitate to tell this Committee”.<sup>190</sup>
128. The Department for Education said that it “is confident in the capabilities of all of its regulators”. The Department noted that it had secured £17.2 million in funding at the 2021 Spending Review for Ofsted to “invest in additional recruitment, training and IT systems” to take on new responsibilities in relation to supported accommodation.<sup>191</sup>
129. **Some regulators can raise their own revenues through levies and charges. However, others depend on the Government for their funding. Those funding decisions inevitably influence regulators’ ability to carry out their functions independently.**
130. **We are concerned that a number of regulators appear not to have sufficient resources to carry out their existing functions effectively, while others have had their responsibilities extended without an increase in resources to match. Regulators cannot regulate efficiently and effectively without adequate funding, which in turn risks hampering the success of the industries they regulate.**
131. ***When carrying out Public Body Reviews of each regulator, the Government should publish an assessment of whether the regulator has the necessary resources to carry out its functions. As part of these reviews, the Government should consider and assess whether there are feasible opportunities for granting regulators the power to raise their own revenues.***
132. ***When regulators are given additional responsibilities, they should publish an assessment of the resources necessary to fulfil them and whether they currently have sufficient capacity. If this assessment shows that the regulator does not have the necessary resources or the ability to raise them, the Government should set out how it will ensure adequate resourcing.***

### Skills

133. The TUC’s Nicola Smith told us that there has been “long-term under-resourcing” of UK labour market enforcement, leading to a situation where “there are something like 40,000 employment agencies operating in the UK, but we have 20 inspectors”.<sup>192</sup>
134. Unchecked UK argued that budget reductions had led to “a huge impact on the skills and expertise that exist in the system”, leaving regulators “struggling to retain experienced staff and key experience”.<sup>193</sup> For instance, MSD’s

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189 Q 59 (Dame Patricia Hodgson)

190 Q 73 (Marcus Bokkerink)

191 Written evidence from the Department for Education (UKR0090)

192 QQ 31, 37 (Nicola Smith)

193 Written evidence from Unchecked UK (UKR0011)

Virginia Acha expressed concern that the MHRA “has lost a lot of scientific and experiential expertise over the past few years”, which had contributed to “considerable delays” in approvals of clinical trials.<sup>194</sup> Concerns about the skills present within regulators were shared by several other witnesses.<sup>195</sup>

135. A number of witnesses raised concerns about staff turnover within regulators, which can lead to “a lack of institutional memory”, “a lack of focus, expertise, experience and skills”, and “constantly changing regulatory initiatives”.<sup>196</sup>
136. Richard Sullivan-Jones explained that the NAO finds “a lot of highly skilled, experienced people within the regulators that we audit, but we do find gaps”, particularly in areas of change.<sup>197</sup> Dame Meg Hillier MP said that “the skills gap is a huge issue”, noting that this often relates to data and IT skills.<sup>198</sup>
137. Virginia Acha stressed that in science and artificial intelligence (AI), “it is a challenge to recruit”, as “when you are fighting for some of the most sought-after recruits” in computer programming and AI, it is “difficult” to meet their salary aims.<sup>199</sup>
138. John Penrose MP said that regulatory staff “become incredibly valuable to the firms that they were previously regulating”.<sup>200</sup> Marcus Bokkerink was “very confident” in the CMA’s current skills and capacity, but added that his “one biggest worry” is attracting and retaining “the specialist skills we need in the future”. He stressed that there is “a massive pay gap with the private sector” which is “now very pronounced in a way that it is almost impossible for these talented people to ignore”.<sup>201</sup>
139. Gareth Davies said that regulators talk of “the need to be able to pay the market rate for the required skills”. He suggested that this argument “is overdone in some cases ... but it is a fair point”.<sup>202</sup> Dame Patricia Hodgson said that “regulators cannot and should not pay what the private sector pays”, which “might be four-times plus” what Ofcom could pay its staff. However, she noted that Ofcom paid “perhaps one-third more than the comparable Civil Service rate”, which some other regulators were limited to.<sup>203</sup>
140. Several regulators outlined that public sector pay principles can lead to skills shortages, including in “new and emerging technologies”.<sup>204</sup> The Charity

194 [QQ 24, 28](#) (Virginia Acha)

195 [Q 28](#) (Michael Gibbons), [Q 52](#) (Dame Meg Hillier MP). Written evidence from John Picton ([UKR0013](#)), written evidence from BUUK Infrastructure ([UKR0044](#)), written evidence from Blueprint for Water ([UKR0064](#)), written evidence from Cadent Gas ([UKR0067](#)), written evidence from the Chartered Institute of Management Accountants ([UKR0046](#)), written evidence from National Grid ([UKR0084](#))

196 Written evidence from BUUK Infrastructure ([UKR0044](#)), written evidence from Chartered Institute of written evidence from Management Accountants ([UKR0046](#)), written evidence from Energy UK ([UKR0061](#)), written evidence from Cadent Gas ([UKR0067](#)), written evidence from Regulatory Reform Group ([UKR0078](#))

197 [Q 10](#) (Richard Sullivan-Jones)

198 [Q 52](#) (Dame Meg Hillier MP)

199 [Q 28](#) (Virginia Acha)

200 [Q 45](#) (John Penrose MP)

201 [Q 78](#) (Marcus Bokkerink)

202 [Q 10](#) (Gareth Davies)

203 [Q 61](#) (Dame Patricia Hodgson)

204 Written evidence from the Civil Aviation Authority ([UKR0015](#)), written evidence from Environment Agency ([UKR0025](#)), written evidence from Information Commissioner’s Office ([UKR0058](#)), written evidence from Professional Standards Authority ([UKR0066](#)), written evidence from Charity Commission ([UKR0083](#)), written evidence from Food Standards Agency ([UKR0085](#))

Commission emphasised that it believes that this issue is “held in common with other regulators but is especially acute for those ... that fall within Civil Service pay limits and that are taxpayer rather than levy-funded”.<sup>205</sup>

141. Virginia Acha explained that this issue “has encouraged some governments, including the US, to take their regulators off the traditional government spine for salary to allow them a little more flexibility”, suggesting that this “should always be an option”.<sup>206</sup> Dame Meg Hillier MP did not want to see “a golden escalator of pay” but added that “it is better to pay someone the rate for the job” rather than getting around the issue by “employing very expensive consultants”.<sup>207</sup>
142. Charles Randell contended, however, that “it is a mistake to think that you attract the best people into regulation through pay” and benchmarking with the private sector, suggesting that people “want a sense of social purpose in what they are doing” and that he is “optimistic about the ability of regulators to continue to attract first-rate people”.<sup>208</sup> The Institute for Government emphasised that “the skills required of a regulator are not always readily purchased from the private sector and must often be incubated in-house”.<sup>209</sup>
143. Michael Gibbons of Bluefield Solar Income Fund argued that one approach would be to “get more expertise from the industry into regulators” via secondments. He accepted that this could cause conflicts of interest but suggested that this could be managed.<sup>210</sup>
144. Phoenix Group and techUK supported the idea of industry secondees working within regulators, while the Regulatory Reform Group suggested that experts should be seconded “*en masse*” from business and consumer groups.<sup>211</sup> John Penrose MP said that there can be “real value” in regulators having staff who know “where all the bodies are buried” but noted that the potential for conflicts “has to be managed very carefully”.<sup>212</sup> The CMA said that secondments between regulators, government departments and law firms “are an important means of sharing and improving skills, expertise and capabilities”.<sup>213</sup>
145. techUK suggested that due to the “limited pool of experts from which regulators can draw on, there should be a greater encouragement of pooling talent between regulators”. They said that this would ensure resources are shared and allow additional capacity “without the need for a lengthy and arduous recruitment process”.<sup>214</sup> In areas such as AI, Microsoft recommended that the Government should “address both operational and technical capability gaps”.<sup>215</sup> Marcus Bokkerink emphasised that in the area of digital competition, the CMA is “up against some of the most sophisticated and

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205 Written evidence from the Charity Commission ([UKR0083](#))

206 [Q 28](#) (Virginia Acha)

207 [Q 56](#) (Dame Meg Hillier MP)

208 [Q 20](#) (Charles Randell)

209 Written evidence from the Institute for Government ([UKR0006](#))

210 [Q 23](#) (Michael Gibbons)

211 Written evidence from Phoenix Group ([UKR0069](#)), written evidence from techUK ([UKR0077](#)) and written evidence from Regulatory Reform Group ([UKR0078](#))

212 [Q 45](#) (John Penrose MP)

213 Written evidence from the Competition and Markets Authority ([UKR0079](#))

214 Written evidence from techUK ([UKR0077](#))

215 Written evidence from Microsoft ([UKR0074](#))

... well-resourced companies in the world when they choose to litigate a decision, and that is tough”.<sup>216</sup>

146. Microsoft noted that there is overlap between several regulators in relation to digital and data issues.<sup>217</sup> techUK also noted that “regulators’ remits can overlap and cause conflicts in priorities”, especially with “emerging technologies which are cross-cutting”.<sup>218</sup>
147. The Professional Standards Authority (PSA), which oversees nine statutory bodies that regulate health professionals, said that it is “a challenge for regulators to keep pace with developments” such as AI and technology. The PSA said that the management of risks in health “is spread across a number of regulatory bodies”, meaning that “a central risk function ... would be helpful.”<sup>219</sup>
148. Digital and technological issues are being faced by a number of regulators, some of whom have been given increased powers in these areas. Four regulators, including Ofcom and the CMA, set up the **Digital Regulation Cooperation Forum (DRCF) in 2020 “to make it easier for them to collaborate on digital regulatory matters”**.<sup>220</sup>
149. Professor Oles Andriychuk, Professor of Law at the University of Newcastle, said that the DRCF is an “excellent example” of regulators co-operating and that several other jurisdictions have introduced or aim to introduce similar mechanisms.<sup>221</sup> The ICO, one of the members of the DRCF, said that it builds the “individual and collective ... capabilities” of regulators, helps to promote “greater regulatory coherence” and “enables coherent, informed and responsive regulation”.<sup>222</sup> Some witnesses argued that the DRCF should include other regulators dealing with digital and technological issues, including the MHRA, the CAA and employment regulators.<sup>223</sup>
150. Charles Randell said that the DRCF is a “good forum” to drive best practice but that there are other areas where “some new forums need to be created”, which could have “more formality, more resources and more transparency about their activities than there is at the moment”.<sup>224</sup>
151. Dame Meg Hillier MP noted that some local authorities have combined some of their functions, such as payroll, as part of the “bread and butter” of looking at their finances. She said that “if regulators are not already looking at that, they probably should be”.<sup>225</sup>
152. Marcus Bokkerink said that there “absolutely ... are benefits” to pooling resources “from a skill-building and capability-building perspective”, which he suggested that certain regulators already do through the DRCF. However, he explained that regulators are also in “competition for the same talent”,

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216 [Q 78](#) (Marcus Bokkerink)

217 Written evidence from Microsoft ([UKR0074](#))

218 Written evidence from techUK ([UKR0077](#))

219 Written evidence from the Professional Standards Authority ([UKR0066](#))

220 Digital Regulation Cooperation Forum, ‘About the DRCF’: <https://www.drcf.org.uk/about-us> [accessed 15 January 2024]

221 Written evidence from Professor Oles Andriychuk ([UKR0048](#))

222 Written evidence from the Information Commissioner’s Office ([UKR0058](#))

223 Written evidence from Form Ventures ([UKR0042](#)), written evidence from the Trades Union Congress ([UKR0047](#))

224 [QQ 17–18](#) (Charles Randell)

225 [QQ 49, 56](#) (Dame Meg Hillier MP)

noting that some regulators have different funding models and can offer “a materially different pay” of between 30% and 50% more than the CMA.<sup>226</sup>

153. **While there are many high-quality staff at the UK’s regulators, there are skills gaps in some areas, particularly in areas of rapid change such as digital and technological skills. The ability of regulators to understand, manage and, if necessary, enforce against activities in their areas of responsibility will be impaired if they cannot access these skills.**
154. **Regulators face a challenge to recruit and retain more specialised staff due to the higher rates of pay available for the same skills in the private sector, and in some instances at other regulators. Industry secondees may help to address this challenge, but create potential conflicts of interest which must be managed.**
155. *When conducting Public Body Reviews of regulators, the Government should assess whether regulators can attract the necessary staff within their current funding regimes and paycales. If they are unable to do so, the Government should allow regulators greater discretion to move outside of those paycales.*
156. *Where regulators face common issues and struggle to recruit the necessary staff individually, they should consider pooling their resources. The Government should consider what measures it could take to facilitate this pooling.*
157. *The Committee sees merit in regulators setting up centres of excellence to pool their resources. Seconding industry staff to centres of excellence could help reduce the potential for conflicts of interest by providing an intermediate step between them and their sector’s regulator.*

## CHAPTER 5: ACCOUNTABILITY

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### Why accountability matters

158. A key question for this inquiry was how regulators should be held to account for their performance, and by whom.
159. Mechanisms by which regulators are held to account may include accountability to government, particularly via their sponsoring department; to Parliament, particularly select committees; to other bodies, such as the NAO; and, where relevant, to consumers and the wider public.<sup>227</sup> The precise mechanisms of accountability may vary between regulators and sectors; for example, we heard that the financial services regulators are subject to particularly extensive accountability frameworks.<sup>228</sup>
160. Former Ofgem and CMA official Stuart Hudson emphasised that “the flipside of the regulators’ independence is that they are not subject to the same forms of accountability as ministers”.<sup>229</sup> Similarly, The Transparency Taskforce stressed that democratic accountability of regulators was “crucial”, as “the people can replace their elected representatives, but they can’t vote out bad regulators”.<sup>230</sup> Several other witnesses also highlighted the importance of accountability in ensuring the legitimacy of the regulators.<sup>231</sup>
161. It was highlighted that many regulators had recently taken on new powers after the UK’s departure from the EU.<sup>232</sup> While some witnesses highlighted the resource implications of this, Visa Europe Ltd also noted that “regulators taking on more responsibility through the onshoring of regulation requires greater scrutiny on their performance”.<sup>233</sup>
162. In addition, some regulators have taken on further powers in relation to digital markets, platforms and services. For example, the Online Safety Act 2023 “confers new functions and powers” on Ofcom to promote the safety of regulated online services, while the Digital Markets, Competition and Consumers Bill, currently at Committee Stage in the House of Lords, would confer powers and duties on the CMA to regulate competition in digital markets.<sup>234</sup>

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227 Written evidence from the Institute of Regulation ([UKR0028](#)). In addition to these lines of accountability, regulators may also be accountable to the courts for the legality of their decisions and to the relevant Ombudsman with respect to complaints. Regulators may also be held to account by one another, particularly by cross-cutting regulators like the Information Commissioner’s Office and the CMA. See written evidence from Professor Robert Hazell ([UKR0072](#))

228 Written evidence from the Financial Conduct Authority ([UKR0039](#)), written evidence from Charles Randell ([UKR0002](#)); letter from Chris Hemsley, CEO of the UK Regulators Network to Lord Hollick, Chair of the Industry and Regulators Committee (8 December 2023): <https://committees.parliament.uk/publications/42615/documents/211801/default/>

229 Written evidence from Stuart Hudson ([UKR0003](#)); see also written evidence from Dr Andreas Kokkinis ([UKR0053](#))

230 Written evidence from the Transparency Taskforce ([UKR0056](#))

231 Written evidence from the Institute of Regulation ([UKR0028](#)); letter from Chris Hemsley, CEO of the UK Regulators Network, to Lord Hollick, Chair of the Industry and Regulators Committee (8 December 2023): <https://committees.parliament.uk/publications/42615/documents/211801/default/> . See also written evidence from Professor Robert Hazell ([UKR0072](#)), written evidence from GuildHE ([UKR0035](#))

232 [Q 49](#) (Dame Meg Hillier MP), written evidence from Phoenix Group ([UKR0069](#)), written evidence from the Civil Society Alliance ([UKR0021](#)), written evidence from Form Ventures ([UKR0042](#)), written evidence from the CMA ([UKR0079](#))

233 Written evidence from Visa Europe Ltd ([UKR0041](#))

234 Online Safety Act 2023, [Part 1](#); [Explanatory Notes to the Digital Markets, Competition and Consumers Bill](#) [HL Bill 12 (2023–24)-EN]

163. **Regulators exercise substantial and, in some cases, increasing powers on behalf of Parliament and the public. Yet as a consequence of their independence, they do not face the same democratic checks and balances as ministers. It is therefore essential for the legitimacy of independent regulators that they are held to account for the use of this delegated power.**

### Accountability to government and Parliament

#### *Accountability to government*

164. Regulators are typically sponsored by a government department: for example, the FCA is sponsored by the Treasury, and Ofsted is sponsored by the Department for Education.<sup>235</sup> Sponsorship teams in the department monitor the regulator's work and its alignment with government priorities on behalf of ministers. In addition, the Cabinet Office plays a cross-cutting role, such as through Public Bodies Reviews.<sup>236</sup>
165. The Institute for Government explained that accountability frameworks between regulators and government depended on the "requirements specified in the legislation which established the regulator, arrangements set out in 'framework documents' produced by sponsor departments outlining their institutional remit, and occasionally as a matter of custom or interpretation".<sup>237</sup>
166. Giving examples of departmental accountability from a regulator's perspective, the CQC explained that it was "required to attend Quarterly Accountability Review (QAR) meetings ... where DHSC<sup>238</sup> hold our CEO to account against our performance metrics and through scrutiny of our financial management."<sup>239</sup>
167. Some government accountability frameworks apply on a cross-cutting basis. The Environment Agency listed, as examples, the Regulators' Code; the principles in section 21 of the Legislative and Regulatory Reform Act 2006<sup>240</sup> that regulatory activities "should be delivered in a way which is transparent, accountable, proportionate, consistent and targeted"; the Growth Duty; and the arm's length body sponsorship code of good practice.<sup>241</sup>
168. As to what the Government could do to improve accountability, the Institute for Government highlighted that "a comprehensive list of each regulator's responsibilities and oversight arrangements does not currently exist in one place" and suggested that the Cabinet Office could maintain such a list.<sup>242</sup> Lord Tyrie, the former Chair of the CMA, proposed "some kind of A-team right at the heart of government, probably in the Cabinet Office, not in the relevant sponsor departments ... capable of identifying issues [with regulators] and answerable directly to the Prime Minister".<sup>243</sup>

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235 Written evidence from the Financial Conduct Authority ([UKR0039](#)), written evidence from Ofsted ([UKR0038](#))

236 Written evidence from the Institute for Government ([UKR0006](#))

237 Written evidence from the Institute for Government ([UKR0006](#))

238 The Department for Health and Social Care

239 Written evidence from the Care Quality Commission ([UKR0030](#))

240 Legislative and Regulatory Reform Act 2006, [Section 21](#)

241 Written evidence from the Environment Agency ([UKR0025](#))

242 Written evidence from the Institute for Government ([UKR0006](#))

243 [Q 14](#) (Lord Tyrie)

169. Other witnesses pointed to the limits of accountability to government. Michael Gibbons of Bluefield Solar Income Fund said that scrutiny by departments tends to be “budget oriented and finance oriented” and that, given regulators’ independence, “to be scrutinised and held accountable only like that is not very satisfactory”.<sup>244</sup> Charles Randell, the former Chair of the FCA, did not think “the answer lies in giving central government more control over these issues than already exists”, in part because “it is natural for the Government of the day to be very accessible to large business interests”; he argued it would be better to strengthen Parliamentary scrutiny instead.<sup>245</sup>
170. The Department of Education said its regulators “are all held accountable through suitable routes which vary dependent on the closeness of the body to the department”.<sup>246</sup> DBT’s evidence submission did not comment on the Government’s overall role in holding regulators to account, pointing instead to its ongoing consultations on regulators (see paragraphs 11–12).<sup>247</sup>
171. **Regulators should be held to account for aspects of their performance by their sponsoring departments within government. Given the importance of regulatory independence, accountability cannot be left to the Government alone, and Parliament must play a critical role.**
172. *The Government can, however, play a role in facilitating parliamentary scrutiny. For example, there is currently no comprehensive list of the UK’s regulators, their responsibilities, and their oversight arrangements. To assist Parliament in holding regulators accountable, the Government should establish, publish, and maintain such a list, including timely information on regulators’ public engagement with parliamentary select committees.*

#### *Parliamentary committees*

173. As public bodies, regulators are accountable to Parliament. Government ministers may also be accountable to Parliament for the performance of a regulator sponsored by their department. There are several mechanisms for parliamentarians to hold regulators accountable, but we focus specifically on the role of select committees.<sup>248</sup>
174. Select committee scrutiny of regulators may involve the relevant departmental committee in the House of Commons scrutinising the regulators sponsored by that Department, whether on a one-off basis or as part of a wider inquiry. Other committees in both Houses, including this Committee, will scrutinise individual regulators where relevant to the terms of their appointment. The Public Accounts Committee, supported by the NAO, also plays a cross-cutting role (see paragraphs 197–204).

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244 [Q 26](#) (Michael Gibbons)

245 [Q 15](#) (Charles Randell)

246 Written evidence from the Department of Education ([UKR0090](#))

247 Written evidence from the Department for Business and Trade ([UKR0089](#))

248 Other mechanisms by which Parliament may scrutinise regulators include through their annual reports, where these are laid before Parliament; through oral and written questions; during debates; and via All-Party Parliamentary Groups (APPGs).

### Box 1: Recent developments in Parliamentary scrutiny of financial services regulation

In June 2022, the Treasury Committee of the House of Commons established a sub-committee to scrutinise regulatory proposals in financial services, citing the new powers the financial services regulators inherited post-Brexit.<sup>249</sup>

The Financial Services and Markets Act 2023 (FSMA) also provides for select committees in each House (or a joint committee) to scrutinise consultations issued by the financial services regulators.<sup>250</sup> The committees concerned are the House of Commons Treasury Committee and any committee designated by the House of Lords for these purposes.

Following the passage of FSMA, the House of Lords Liaison Committee recommended the creation of “a new, freestanding sessional committee to scrutinise consultations” under the Act, adding that “the new committee’s remit should extend to considering the regulation of financial services generally.”<sup>251</sup> The House has since adopted the Liaison Committee’s recommendation, and the new Financial Services Regulation Committee was established on 24 January 2024.

Source: House of Commons Treasury Committee, House of Lords Liaison Committee

175. A number of witnesses highlighted the importance of Parliament’s role in holding regulators to account.<sup>252</sup> The Institute for Government said that “Parliament’s convening power and public voice enable it to create a level of public accountability for failures that cannot be achieved elsewhere”, adding that for regulators, “there is a strong incentive ... not to be in a position where they have to defend a failure in Parliament.”<sup>253</sup>
176. Former regulators the Committee spoke to had similar views. Charles Randell said that parliamentary scrutiny had “made an overwhelmingly positive contribution to the work of the FCA during my time as chair”, while Dame Patricia Hodgson, the former Chair of Ofcom, said that the regulator’s annual sessions with the (then) Digital, Culture, Media and Sport Committee were “taken extremely seriously” and “affected how Ofcom thought about its business plan”.<sup>254</sup>
177. Current regulators also expressed positive sentiments: the FCA said it was “vital” that it is held to account, while Ofgem said accountability was “essential and welcome”.<sup>255</sup> Marcus Bokkerink, Chair of the CMA, said: “we are appearing more than we used to in front of parliamentary committees, which is a good thing”.<sup>256</sup> The CAA said it was “regularly” called before

249 House of Commons Treasury Committee, *Future Parliamentary scrutiny of financial services regulations* (Second Report of Session 2022–23, HC 394)

250 Financial Services and Markets Act, [Section 38](#)

251 Liaison Committee, *A committee on financial services regulation* (6th Report of Session 2022–23, HL Paper 267)

252 Written evidence from Stuart Hudson ([UKR0003](#)), written evidence from John Picton ([UKR0013](#)), written evidence from National Grid ([UKR0084](#)), [Q 26](#) (Filippo Pollara), [Q 34](#) (David Mendes da Costa), [Q 34](#) (Nicola Smith)

253 Written evidence from the Institute for Government ([UKR0006](#))

254 Written evidence from Charles Randell ([UKR0002](#)), [Q 63](#) (Patricia Hodgson)

255 Written evidence from the Financial Conduct Authority ([UKR0039](#)), written evidence from Ofgem ([UKR0094](#))

256 [Q 81](#) (Marcus Bokkerink)

committees, as did the Bank of England, the CMA and Ofcom.<sup>257</sup> In contrast, the Food Standards Agency said it had “relatively rarely” been asked to appear.<sup>258</sup>

178. A few witnesses argued that the existing structure for parliamentary scrutiny “works well”.<sup>259</sup> The NAO’s Gareth Davies said that, in theory, the combination of departmental committees and the Public Accounts Committee gave “proper coverage” of regulators.<sup>260</sup> TheCityUK warned that additional mechanisms for scrutiny should not negatively affect the balance between oversight and “depoliticized, flexible, agile, regulatory decision-making”.<sup>261</sup>
179. From a regulator perspective, Ofsted felt that it was “already thoroughly accountable to Parliament”, and that “additional layers of accountability will need to be carefully thought through to ensure they add sufficient value.”<sup>262</sup> The Department for Education also felt that, in terms of the regulators it sponsors, “the balance is correct and the involvement of Parliament is appropriate”.<sup>263</sup>
180. Many other witnesses, however, highlighted significant limitations with current parliamentary scrutiny of regulators. A common concern was that, as the Institute for Government put it, Parliament “tends towards reactive rather than proactive scrutiny”.<sup>264</sup> Professor Julia Black from the LSE emphasised that Parliament as a whole “does not have a system for holding individual regulators to account on a regular, periodised basis”, while Michael Gibbons argued that “for a regulator to appear for a [committee] session now and again is not really effective accountability and scrutiny”.<sup>265</sup>
181. GuildHE, a representative body in the higher education sector, pointed out that scrutiny of regulators is “at the discretion of relevant committees”; for example, while they praised this Committee’s recent inquiry into the OfS, they were concerned that “there was no guarantee of such scrutiny”. They added that this “discretionary approach” can “risk leaving an accountability gap with Parliament that would be filled with a more systematic approach”.<sup>266</sup>
182. Stuart Hudson argued that for many committees, “attention is naturally drawn to issues that are already in the public eye”.<sup>267</sup> Similarly, the Institute for Government said that regulators are usually “called in when something goes wrong”, and cited draft research which found that between 2020–23, 36 out of their list of 116 statutory regulators “were not called to provide evidence at all.”<sup>268</sup>

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257 Written evidence from the Civil Aviation Authority ([UKR0015](#)), written evidence from the Bank of England ([UKR0073](#)), written evidence from the Competition Markets Authority ([UKR0079](#)), written evidence from Ofcom ([UKR0081](#))

258 Written evidence from the Food Standards Agency ([UKR0085](#))

259 Written evidence from the Association of Mortgage Intermediaries (AMI) ([UKR0049](#)); see also written evidence from UK Finance ([UKR0075](#)).

260 [Q 5](#) (Gareth Davies)

261 Written evidence from TheCityUK ([UKR0057](#))

262 Written evidence from Ofsted ([UKR0038](#))

263 Written evidence from the Department for Education ([UKR0090](#))

264 Written evidence from the Institute for Government ([UKR0006](#))

265 Written evidence from Professor Julia Black ([UKR0034](#)), [Q 26](#) (Michael Gibbons)

266 Written evidence from GuildHE ([UKR0035](#))

267 Written evidence from Stuart Hudson ([UKR0003](#))

268 Written evidence from the Institute for Government ([UKR0006](#))

183. John Penrose MP said that scrutiny of regulators “does not get nearly enough attention or focus, certainly at my end of the building”.<sup>269</sup> Dame Meg Hillier MP, Chair of the Public Accounts Committee, said that her Committee’s scrutiny of regulators was extensive, but often “ad hoc”, adding, “we cannot say, hand on heart, that the Public Accounts Committee systematically looks at [these] matters”.<sup>270</sup>
184. Several witnesses felt that these problems reflected the limited resourcing of parliamentary committees. Prof Black argued that “Parliament lacks capacity to hold regulators to account in a systematic way”.<sup>271</sup> Dame Patricia Hodgson pointed out the scale of the task: “however good [committees] are, there are up to 90 regulators and the time of select committees and Parliament is limited.”<sup>272</sup> The experience of this Committee would appear to bear this out; since our inception three years ago, we have scrutinised seven individual regulators out of this total of 90.
185. Another concern was the power of select committees. Dr Andreas Kokkinis, from the University of Birmingham, thought that the UK system was “a weak form of accountability as parliamentary committees have no hard powers over regulators”.<sup>273</sup>
186. Lord Tyrie, in contrast, argued that committees have significant powers that they did not always use, citing as an example the Treasury Committee’s decision under his tenure as Chair to embed its own Specialist Advisers within the [then] Financial Services Authority to monitor and investigate aspects of the regulator’s work (explained further in Box 2 below).<sup>274</sup>

**Box 2: Case study on the Treasury Committee’s investigations into the Financial Services Authority (FSA)**

On two occasions under Lord Tyrie’s tenure as Chair, the Treasury Committee appointed Specialist Advisers to review FSA reports into failings at banks during the financial crisis: firstly at the Royal Bank of Scotland (in 2011), and secondly at HBOS (in 2013). On both occasions, the advisers were based inside the FSA, given access to the relevant papers and staff, and examined drafts of the FSA’s reports.

In a report published in 2015, Lord Tyrie argued that this process had a considerable influence on the FSA’s reports and had “created a new and powerful investigative tool for Parliament” to scrutinise regulators.<sup>275</sup>

187. We heard a number of proposals for improving accountability within the existing system. These included general calls for the role of Parliament to be strengthened, or for committees to be given greater powers.<sup>276</sup> Other

269 Q 24 (John Penrose MP)

270 QQ 49-50 (Dame Meg Hillier MP)

271 Written evidence from Professor Julia Black (UKR0034); see also written evidence from BUUK Infrastructure (UKR0044), written evidence from Dr Andreas Kokkinis (UKR0053)

272 Q 63 (Dame Patricia Hodgson). See also Q 50 (Dame Meg Hillier MP)

273 Written evidence from Dr Andreas Kokkinis (UKR0053)

274 Q 17 (Lord Tyrie)

275 Andrew Tyrie, ‘The Poodle Bites Back: Select Committees and the Revival of Parliament’, *Centre for Policy Studies* (18 June 2015): <https://cps.org.uk/research/the-poodle-bites-back-select-committees-and-the-revival-of-parliament/> [accessed 17 January 2024]

276 Written evidence from Unchecked UK (UKR0011), written evidence from Dr Andreas Kokkinis (UKR0053), written evidence from Blueprint for Water (UKR0064)

witnesses, including Kevin Parry, the Chair of Nationwide Building Society,<sup>277</sup> argued that “extra resource must be allocated” to committees.<sup>278</sup>

188. There were also proposals for more frequent and routine committee scrutiny. Hoxton Farms were one of several witnesses to argue that “Parliament should review regulators’ performance in depth at regular intervals”, such as quarterly or annually.<sup>279</sup> The CAA also suggested that “Parliament may want to consider whether it is appropriate to invite regulators to appear more routinely on broader issues of performance”.<sup>280</sup>
189. However, it was clear that such proposals would have implications for both resourcing and the right of committees to determine their own work. Dame Meg Hillier MP said, “realistically, we do not want to overload committees that are already doing their own work”, adding that “each select committee ... will jealously guard its independence, and quite rightly”.<sup>281</sup>
190. Some witnesses suggested that a new committee could be established to scrutinise regulators, with most of these advocating that this should be a joint committee of both Houses.<sup>282</sup> Stuart Hudson said that such a committee would be “well-placed to entrench this kind of scrutiny of longer-term and cross-cutting issues”.<sup>283</sup> The Regulatory Reform Group also called for such a committee, noting that it “would require significant additional resourcing”.<sup>284</sup>
191. Gareth Davies was more sceptical of this idea, noting that such committees exist in other countries but “can be very stretched, given that they have a huge range of areas to cover” and have to be “generalists rather than specialists”.<sup>285</sup>
192. **Parliamentary scrutiny has made a positive contribution in holding regulators to account. However, there is a perception in some quarters, with which the Committee concurs, that this scrutiny has tended to be ad hoc and in response to events rather than routine and systematic.**
193. **Regulatory performance is a complex area, and Parliament’s committees do not currently have the time or resources to routinely monitor the performance of around 90 regulators. Although it is for parliamentary committees to decide how they spend their time, we are nonetheless concerned that this situation has led to a lacuna in scrutiny.**
194. **There is some merit in the idea, expressed by several witnesses, of a new joint committee to scrutinise all regulators. However, it is not clear to us that a new committee would avoid the constraints that**

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277 Mr Parry gave evidence to the Committee in a personal capacity.

278 Written evidence from Kevin Parry (UKR0018); see also written evidence from Unchecked UK (UKR0011), written evidence from the Institute for Government (UKR0006)

279 Written evidence from Hoxton Farms (UKR0016); see also Q 26 (Michael Gibbons), written evidence from Institute for Government (UKR0006), written evidence from Microsoft (UKR0074)

280 Written evidence from the Civil Aviation Authority (UKR0015)

281 Q 49 (Dame Meg Hillier MP)

282 Written evidence from Stuart Hudson (UKR0003), written evidence from the Institute for Government (UKR0006), written evidence from Dr Andreas Kokkinis (UKR0053), written evidence from the Regulatory Reform Group (UKR0078)

283 Written evidence from Stuart Hudson (UKR0003)

284 Written evidence from the Regulatory Reform Group (UKR0078); see also written evidence from Charles Randell (UKR0002)

285 Q 5 (Gareth Davies)

**have hindered other committees, including this Committee, from undertaking systematic and routine scrutiny of all regulators. To perform such a major undertaking adequately, any new committee would need access to significant additional resources and expertise, well beyond that of a typical parliamentary committee.**

195. We note that existing mechanisms for parliamentary scrutiny can be flexible. For example, in an innovative use of investigative parliamentary scrutiny, the Treasury Committee embedded its Specialist Advisers into a regulator to investigate its work on two occasions in 2011 and 2013. We draw this potential precedent to the attention of other parliamentary committees, so that they can consider exploring it further.
196. We welcome the recent establishment of the House of Lords Financial Services Regulation Committee, which we anticipate will strengthen parliamentary scrutiny of the financial services regulators.

*The National Audit Office*

197. The National Audit Office (NAO) is the UK’s independent public spending watchdog, and it supports Parliament in holding the Government to account for value for money. It is independent of the Government and reports to Parliament.<sup>286</sup>
198. The NAO has the statutory authority to audit and report on the financial accounts of all government departments and other public bodies, including regulators, and to examine and report on value for money with regard to public spending.<sup>287</sup> The Comptroller and Auditor General, who leads the NAO, is also empowered by the 1983 National Audit Act to carry out investigations into the economy, efficiency and effectiveness with which regulators have used their resources in discharging their functions.<sup>288</sup>
199. The NAO has a particularly close working relationship with the Public Accounts Committee, which uses its reports to scrutinise government spending. However, the NAO can also support other committees, or individual parliamentarians, on matters falling within its remit. Dame Meg Hillier MP explained, “as the Public Accounts Committee we have first refusal on any National Audit Office piece of work that it presents to Parliament. We will either take that or discuss with a sister committee whether it would want to take that in lieu”. She added that “without the National Audit Office we could not do our work”.<sup>289</sup>
200. Although the NAO’s work is not limited to regulators, Gareth Davies said that “Individual regulators and systems of regulation have featured prominently in the last few years of our value-for-money work”, which was “not so much because of the size of the regulators as spending organisations but because of their influence”.<sup>290</sup>
201. As with parliamentary committees, however, the NAO has “finite” resources. Gareth Davies said the NAO was “relatively fortunate” in that “government

286 National Audit Office, ‘About us’ <https://www.nao.org.uk/about-us/> [accessed 02 January 2024]

287 National Audit Act 1983, [Section 6](#)

288 National Audit Act 1983, [Section 6](#)

289 [Q 49](#) (Dame Meg Hillier MP)

290 [Q 1](#) (Gareth Davies)

cannot determine our resources”.<sup>291</sup> Nevertheless, he was clear that “We certainly do not have a plan that says that, every three years, we will carry out a value-for-money audit of every major regulator. We simply are not resourced to do that.”<sup>292</sup>

202. Some witnesses questioned whether the role of the NAO in scrutinising regulators could be expanded.<sup>293</sup> However, Gareth Davies warned that “if we were tasked with reviewing individual regulators on a systematic and regular basis, that would have very significant resource implications for us”.<sup>294</sup>
203. Moreover, Prof Black argued strongly that the NAO was not an appropriate vehicle for systematic scrutiny of regulators:

“The NAO’s remit is both too narrow and too broad for it to be able to act as a mechanism for providing systematic review of the UK’s plethora of regulatory systems. Its focus is on value for money, which may or may not align with an overall look at regulatory performance, and whilst most regulators are subject to NAO review this is not always the case ... Its remit also covers the whole of government, so understandably most of its reports are focused on the work of central government departments ... it does not have the capacity to provide a systematic review of the performance of regulators within the UK on a regular basis.”<sup>295</sup>

204. **The National Audit Office plays an important and valuable role in scrutinising regulators’ use of public money. However, its remit focuses on value for money, across the whole of government. Therefore, we do not believe that expanding the NAO’s remit to include regular and systematic scrutiny of overall regulatory performance is the way forward. As well as having significant resource implications, it would risk complicating the clarity of the NAO’s current role.**

### *The National Infrastructure Commission*

205. The National Infrastructure Commission (NIC) is an executive agency of the Treasury which provides the Government with impartial, expert advice on major long-term infrastructure challenges.<sup>296</sup> The Commission makes a National Infrastructure Assessment every five years, which the Government is required to respond to.<sup>297</sup> It has discretion to determine its own work programme and recommendations but cannot reopen settled government policy outside of the National Infrastructure Assessments.<sup>298</sup>
206. James Heath, Chief Executive of the NIC, explained that they have “an indirect role” in examining the work of certain regulators, insofar as their work

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291 The NAO’s budget is allocated to it annually by the Public Accounts Commission, a cross-party group of MPs. The Commission receives advice from the Treasury, but is not obliged to take it. The funding allocated to the NAO is largely drawn from Parliament’s budget. [Q 1](#) (Gareth Davies); Budget Responsibility and National Audit Act 2011, [Section 23](#)

292 [Q 5](#) (Gareth Davies)

293 [Q 18](#) (Lord Tyrie), written evidence from Sustainability First ([UKR0032](#))

294 [Q 5](#) (Gareth Davies)

295 Written evidence from Professor Julia Black ([UKR0034](#))

296 National Infrastructure Commission, ‘About the Commission’: <https://nic.org.uk/about/the-commission/> [accessed 02 January 2024]

297 National Infrastructure Commission, *National Infrastructure Assessment* (18 October 2023): <https://nic.org.uk/studies-reports/national-infrastructure-assessment/> [accessed 02 January 2024]

298 Oral evidence taken before the Industry and Regulators Committee, Follow-up inquiry on Ofwat, the water industry and the role of the Government, 13 June 2023 (Session 2022–23), [Q 2](#) (Professor Jim Hall)

affects long-term investment in infrastructure.<sup>299</sup> For example, in May 2023 the Commission wrote to Ofwat about the management of water company assets.<sup>300</sup> The NIC also emphasised that their advice to the Government focused on infrastructure policy and strategy, rather than delivery, which is instead the role of the Infrastructure and Projects Authority.<sup>301</sup>

207. The NIC was clear, however, that it was not its role to scrutinise the wider performance of the utilities regulators. Their Chair Sir John Armitt said this would not “go with what we do”, emphasising that regulators’ “fundamental reporting line” is to the NAO and select committees. James Heath added that, while the NIC could “offer select committees advice as requested on particular subjects”, this would be different to “the NIC taking on an oversight role of regulatory performance, which is not our remit and we do not have the resources to do”.<sup>302</sup>
208. The NIC is a non-statutory body. However, Sir John Armitt explained that, when it was established, he had initially “recommended that it should be on a statutory basis”. His view was that this would still be beneficial to the NIC, though he added that “what is more important is the quality of the work.”<sup>303</sup>
209. As part of our follow-up work into Ofwat, the water industry and the role of the Government, we wrote to DEFRA in September 2023 and asked them to consider “the merits of placing the Commission on a statutory basis”.<sup>304</sup> In his response to the letter, the Minister for Water and Rural Affairs, Robbie Moore MP, said that the “scope and scale” of the NIC’s work is always “kept under consideration”.<sup>305</sup>
210. **We welcome the work of the National Infrastructure Commission in examining the work of the utilities regulators. We agree with the Commission’s assessment that they would not be the appropriate body, either in terms of remit or of resources, to conduct systematic and wide-ranging scrutiny of the regulators they work with.**
211. *The expertise of the National Infrastructure Commission should be put to further use by Parliament in its scrutiny of the utilities regulators. To that end, we call on the Government to place the Commission on a statutory footing, with the ability to examine government policy outside of its National Infrastructure Assessments. This would enhance the Commission’s ability to report independently on long-term infrastructure challenges, including where these are the result of insufficient investment and maintenance.*

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299 Q 90 (James Heath)

300 National Infrastructure Commission, ‘Letter to Ofwat on water company asset management’ (19 May 2023): <https://nic.org.uk/correspondence/letter-to-ofwat-on-water-company-asset-management/> [accessed 02 January 2024]

301 Q 90 (James Heath, Sir John Armitt)

302 Q 90 (James Heath)

303 Q 92 (Sir John Armitt)

304 Letter from Lord Hollick, Chair of the Industry and Regulators Committee to the Rt Hon Therese Coffey MP then Secretary of State for Environment, Food and Rural Affairs (18 September 2023): <https://committees.parliament.uk/publications/41466/documents/204274/default/>

305 Letter from Robbie Moore MP, Minister for Water and Rural Affairs, to Lord Hollick, Chair of the Industry and Regulators Committee (13 December 2023): <https://committees.parliament.uk/publications/42616/documents/211803/default/>

*A new body to support scrutiny of regulators?*

212. In the context of concerns about the current system of scrutiny and accountability, several witnesses made the case for a new body to support greater scrutiny of the UK's regulators. Professor Black proposed an "Office of Regulatory Performance" to address the "gap" in parliamentary accountability of regulators.<sup>306</sup> Lord Tyrie called for "a body in Parliament that is a scrutineer of regulators", analogous to the NAO.<sup>307</sup>
213. The Institute for Government said that a "new oversight body" could be established either outside Parliament, or reporting to Parliament.<sup>308</sup> Dr Kokkinis said that his preferred option of a new joint committee should be supported by "analysis and research undertaken by a new public body".<sup>309</sup>
214. Some witnesses proposed a new body specifically for scrutiny of the financial services regulators. Lord Bridges of Headley, for instance, called for an "Office for Financial Regulatory Accountability (OFRA)".<sup>310</sup> He has previously argued that this is necessary because "while the [financial] regulators are getting more powers, there is no commensurate increase in their scrutiny and accountability".<sup>311</sup> Similarly, Kevin Parry advocated a new "executive non-departmental public body", which would be sponsored by HM Treasury, subject to parliamentary scrutiny and chaired by "a distinguished FTSE 100 qualified leader with a prominent background in financial services".<sup>312</sup>
215. For other witnesses, the priority for a new body was to focus on strengthening consumer input into regulators.<sup>313</sup> We discuss consumer input into regulators further in Chapter 6.
216. On what such a new body would look like, Prof Black proposed a remit to "scrutinise and assess the extent to which individual regulators are meeting the objectives set for them in legislation", and that it would also be "required, and empowered, to take a system wide view". She added that the body's powers and its resources would be modelled on those of the NAO.<sup>314</sup> Lord Tyrie thought that the new body could be "much smaller" than the NAO, but stressed that it must be "specialist" and have "institutional memory".<sup>315</sup>
217. For its advocates, a new body would "bring in genuine evaluation expertise and give non-political, objective advice".<sup>316</sup> Prof Black said this would "enhance but not usurp Parliament's ability to call to account not just individual regulators, but all those public bodies involved in a regulatory system, and to do so in an informed and systematic way".<sup>317</sup>
218. A few witnesses, however, were not fully convinced by the case for a new body. Dame Meg Hillier MP agreed that there was "a gap" in scrutiny at present

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306 Written evidence from Professor Julia Black ([UKR0034](#))

307 [Q 14](#) (Lord Tyrie). See also [Q 26](#) (Michael Gibbons) and written evidence from Desmond Chin ([UKR0080](#))

308 Written evidence from the Institute for Government ([UKR0006](#))

309 Written evidence from Dr Andreas Kokkinis ([UKR0053](#))

310 Written Evidence from Lord Bridges ([UKR0093](#))

311 HL Deb, 1 March 2023, [cols 18–19](#) [Grand Committee]

312 Written evidence from Kevin Parry ([UKR0018](#))

313 Written evidence from Dame Patricia Hodgson ([UKR0071](#)). See also written evidence from the Transparency Taskforce ([UKR0056](#))

314 Written evidence from Professor Julia Black ([UKR0034](#))

315 [Q 14](#) (Lord Tyrie)

316 [Q 26](#) (Michael Gibbons); see also written evidence from Desmond Chin ([UKR0080](#))

317 Written evidence from Professor Julia Black ([UKR0034](#))

and said there “could be an argument” for a separate body, but warned that the “danger” of a separate body was that “there might be a sense that other bits of the system think it is not their job to look at regulators.” She also noted that existing select committees have “valuable” knowledge of their sector and department that was beneficial to scrutiny of individual regulators.<sup>318</sup>

219. The UK Regulators Network also felt that there was “significant scope” for parliamentary committees to “tailor and adapt the scrutiny of regulators through existing mechanisms—without the need for ... further statutory mechanisms”.<sup>319</sup> Sustainability First expressed doubt that “the creation of an ‘Ofreg’ to scrutinise the regulators would be worthwhile”.<sup>320</sup>
220. Regarding the financial services sector, Charles Randell was not convinced that “balancing another turtle on the back of the enormous pile of turtles of accountability that the FCA already has would improve its performance.”<sup>321</sup>
221. **The size and complexity of the UK’s regulatory landscape, and the limited resources available to Parliament, have led to an accountability gap, particularly as far as routine and systematic scrutiny of regulators is concerned. Several of our witnesses called for the creation of a new body to address this gap.**
222. *The Government should create an independent statutory body analogous to the National Audit Office to advise and support Parliament and its select committees in holding regulators to account for their performance in a routine and systematic manner. We suggest that this body could be named the ‘Office for Regulatory Performance’.*
223. *As in the case of the National Audit Office, such a body should be accountable to Parliament, rather than the Government. Its remit will need to be designed carefully so that it complements, rather than conflicts, with existing parliamentary scrutiny of regulators. It would need specialist, experienced staff to aid Parliament in conducting effective scrutiny.*
224. *We envisage that the new body would be funded from Parliament’s budget, like the National Audit Office. The Government should ensure a commensurate increase in Parliament’s budget to properly fund the new scrutiny body.*
225. *The new body should publish its reports, providing useful insight to Parliament, the Government and the public. These reports should become a key element in committee scrutiny of the performance of regulators, in a similar fashion to the Public Accounts Committee’s use of the reports of the National Audit Office.*

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318 Q 49 (Dame Meg Hillier MP)

319 Letter from Chris Hemsley, CEO of the UK Regulators Network to Lord Hollick, Chair of the Industry and Regulators Committee (8 December 2023): <https://committees.parliament.uk/publications/42615/documents/211801/default/>

320 Written evidence from Sustainability First (UKR0032)

321 Q 14 (Charles Randell)

## CHAPTER 6: TRANSPARENCY AND ENGAGEMENT

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### Transparency

226. Stuart Hudson, formerly of Ofgem and the CMA, set out that “the first level of accountability is in the hands of the regulators themselves”.<sup>322</sup>
227. Regulators who submitted evidence to the Committee’s inquiry emphasised their commitment to transparency.<sup>323</sup> The CQC said transparency was of “fundamental importance”, while the Food Standards Agency described it as a “guiding principle”.<sup>324</sup>
228. Evidence we received from regulators set out in detail their specific transparency mechanisms. These included publishing board agendas and minutes; publishing retrospective annual reports, many of which are laid before Parliament; publishing strategies or business plans for the year(s) ahead; publishing other documents, such as data sets and guidance; and responding to Freedom of Information requests.<sup>325</sup> A distinction was drawn between statutory transparency mechanisms and voluntary adoption of transparent practices.<sup>326</sup>
229. Dame Patricia Hodgson, the former Chair of Ofcom, felt that transparency had “improved enormously over the years, particularly as websites have become the go-to place”, though she added that it remains “one of the biggest challenges”.<sup>327</sup> Virginia Acha of MSD said that the medicines regulators had been “remarkably open”, citing the willingness of the MHRA to publish performance indicators even where these “do not show it up in a very good light”.<sup>328</sup>
230. Many more witnesses, however, shared the sentiments of the NAO’s Gareth Davies that “there is still a lot of room for improvement on transparency”.<sup>329</sup> The CAA noted that “Stakeholders rightly often call for greater transparency”.<sup>330</sup> Dr Andreas Kokkinis from the University of Birmingham described regulators’ annual reports as “suboptimal”, adding that they “do not always provide clear, comparable, verified and specific information”.<sup>331</sup>
231. One particular concern was regulators’ transparency over their enforcement actions against non-compliance.<sup>332</sup> Blueprint for Water, part of the nature

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322 Written evidence from Stuart Hudson ([UKR0003](#))

323 Written evidence from the Environment Agency ([UKR0025](#)), written evidence from the Information Commissioner’s Office ([UKR0058](#))

324 Written evidence from the Care Quality Commission ([UKR0030](#)), written evidence from the Food Standards Agency ([UKR0085](#))

325 Written evidence from the Environment Agency ([UKR0025](#)), written evidence from the Institute of Regulation ([UKR0028](#)), written evidence from the Payment Systems Regulator ([UKR0055](#)), written evidence from the Information Commissioner’s Office ([UKR0058](#)), written evidence from the Office of Qualifications and Examinations Regulation ([UKR0062](#)), written evidence from the Competition and Markets Authority ([UKR0079](#)), written evidence from Ofcom ([UKR0081](#)), written evidence from the Health and Safety Executive ([UKR0082](#)), written evidence from the Department for Education ([UKR0090](#))

326 Written evidence from the Institute for Government ([UKR0006](#)); letter from Chris Hemsley, CEO of the UK Regulators Network, to Lord Hollick, Chair of the Industry and Regulators Committee (8 December 2023): <https://committees.parliament.uk/publications/42615/documents/211801/default/>

327 [Q 64](#) (Dame Patricia Hodgson)

328 [Q 27](#) (Virginia Acha)

329 [Q 7](#) (Gareth Davies); see also [Q 49](#) (Dame Meg Hillier MP)

330 Written evidence from the Civil Aviation Authority ([UKR0015](#))

331 Written evidence from Dr Andreas Kokkinis ([UKR0053](#))

332 Written evidence from Professor Robin Ellison ([UKR0005](#))

and animal welfare coalition Wildlife and Countryside Link, set out a specific example of this in the water sector:

“It has taken external organisations such as Violation Tracker UK to provide an accessible, easy-to-use database of corporate regulatory infringements, and any enforcement action taken. This external provision of data is providing scrutiny and accountability that would otherwise be lacking. Data on the number of enforcement actions taken, and whether these have been followed up with penalties, is being obtained through Freedom of Information requests; it should instead be made publicly available by the [Environment] Agency”.

Blueprint for Water added that unless data is presented accessibly, “it is difficult to assess whether a regulator has been sufficiently monitoring and enforcing compliance, and if this is having a positive impact.”<sup>333</sup> Similarly, Nicola Smith of the TUC felt that “We should be able to see [a regulator’s] assessment of the evidence of non-compliance and a plan for what is going to be done about it”.<sup>334</sup>

232. The Regulatory Reform Group argued that transparency was limited because regulators have “little to no incentive to highlight their own performance failures.”<sup>335</sup> Similarly, Professor Robin Ellison, from the College of Lawmakers, said that because “there are few rewards for success ... [and] reputational penalties for failure, few regulators will confess to error.”<sup>336</sup>
233. The Institute for Government said that one of the main issues with regulators’ approach was “not a lack of information, but too much of it, presented in a way which is not easily digestible to most MPs, peers or the general public”.<sup>337</sup> Gareth Davies also criticised what he described as a “tactic” where regulators would publish “pages and pages of spreadsheets”. He argued that regulators should instead publish what “really matters to people”, including things they are “not proud of”.<sup>338</sup>
234. To improve regulatory transparency, Dame Meg Hillier MP, Chair of the Public Accounts Committee, emphasised the need for “clear reporting, in very plain English”, as did the NIC’s Sir John Armitt.<sup>339</sup> Sustainability First also emphasised that “genuine transparency comes not from publishing reams of information, but from information being both accessible and useful”.<sup>340</sup> Gareth Davies said an example of best practice would be where “on the front page of the website, there is a very easy-to-use dashboard with the key performance indicators that really do matter to the public”.<sup>341</sup>
235. The Regulatory Reform Group and Phoenix Group both felt that regulators should be required to “explain why and how they made decisions”.<sup>342</sup> Charles Randell, the former FCA Chair, said regulators’ policy documents should

333 Written evidence from Blueprint for Water ([UKR0064](#))

334 [Q 36](#) (Nicola Smith)

335 Written evidence from the Regulatory Reform Group ([UKR0078](#)); see also [Q 14](#) (Lord Tyrie)

336 Written evidence from Professor Robin Ellison ([UKR0005](#))

337 Written evidence from the Institute for Government ([UKR0006](#))

338 [Q 7](#) (Gareth Davies); see also written evidence from Blueprint for Water ([UKR0064](#))

339 [QQ 52, 53](#) (Dame Meg Hillier MP); [Q 101](#) (Sir John Armitt)

340 Written evidence from Sustainability First ([UKR0032](#))

341 [Q 7](#) (Gareth Davies)

342 Written evidence from the Regulatory Reform Group ([UKR0078](#)), written evidence from Phoenix Group ([UKR0069](#))

“contain a clear map” to the regulator’s statutory objectives and how it has interpreted them, adding that only some did this at present.<sup>343</sup>

236. DBT’s evidence submission did not comment on whether it believed regulators were sufficiently transparent, instead referring the Committee to its then ongoing consultations (see paragraphs 11–12).<sup>344</sup> The Department for Education, meanwhile, argued that those regulators it sponsors are “suitably transparent”.<sup>345</sup>

237. **The transparency of regulators varies. Publishing large volumes of information, as some regulators do, is not the same as effective transparency. In fact, this approach can actively hinder scrutiny by burying key information, or by presenting it in inaccessible formats. We also note that regulators have limited incentives to highlight their own performance failures where they are not required to do so.**

238. *Effective scrutiny depends on information being both available and accessible. Regulators should review how they publish and present performance information. In doing so, they should ensure performance information is presented in a prominent and accessible way, and in clear, succinct and simple language that the public and parliamentarians can understand. These publications should explain how regulators have complied with their objectives, including matters they are required to ‘have regard to’. Where relevant, they should also include information on the enforcement action regulators take (or choose not to take) against non-compliance, and an assessment of the effectiveness of this.*

This is something the new MoR could easily set expectations (and provide support) around.

### Metrics and performance measurement

239. Holding regulators to account for their performance raises the question of how successful performance is measured, and we heard that this is done in a variety of ways.<sup>346</sup> The FCA, for example, uses metrics including “timeliness of our responses to consumers, firms, and MPs, authorisation statistics, voluntary targets for listings reviews and detail on our enforcement data”.<sup>347</sup> Ofcom emphasised qualitative methods of performance measurement, such as “ex post evaluations on key interventions ... and periodic stakeholder reviews to gather feedback”.<sup>348</sup>

240. For the CMA, Marcus Bokkerink said that their performance should be judged on whether it was “having a real, tangible impact on the people we serve”. Emphasising the CMA’s focus on measuring direct consumer benefit, he explained that “the Government have set us a target of 10:1—so £10 of consumer benefit for every £1 spent—and we have been running at 20:1 for the last three years and will continue to do so.”<sup>349</sup>

343 Written evidence from Charles Randell ([UKR0002](#))

344 Written evidence from the Department for Business and Trade ([UKR0089](#))

345 Written evidence from the Department of Education ([UKR0090](#))

346 Written evidence from the Environment Agency ([UKR0025](#)), written evidence from the Bank of England ([UKR0073](#)), written evidence from the Charity Commission ([UKR0083](#)), written evidence from the Food Standards Agency ([UKR0085](#)), written evidence from the Department for Business and Trade ([UKR0089](#))

347 Written evidence from the Financial Conduct Authority ([UKR0039](#))

348 Written evidence from Ofcom ([UKR0081](#))

349 [Q 75](#) (Marcus Bokkerink)

241. Some witnesses were critical of the metrics used by some regulators, which Dame Meg Hillier MP described as “often very poor”.<sup>350</sup> From an industry perspective, Michael Gibbons of Bluefield Solar Income Fund argued that “in any good business you have meaningful KPIs”<sup>351</sup>, adding, “Most KPIs I see in regulators ... do not really give you an opportunity to judge whether performance is up to standard”.<sup>352</sup>

*Limitations of metrics*

242. Several witnesses, including Ofgem, argued that given the wide variety of different regulators, “generic or universal metrics may not provide useful and accurate information”.<sup>353</sup> Other regulators also argued they should not be held accountable for factors that are outside of their control.<sup>354</sup>
243. Other witnesses argued that metrics for regulator’s performance are “not always tangible or easy to measure”.<sup>355</sup> David Mendes da Costa, of Citizens Advice, said that it was “quite difficult to come up with a metric for what success looks like”. He warned that “if you are measuring the wrong thing, the wrong thing will get done. I would rather have no metrics than the wrong metrics.”<sup>356</sup>
244. Stuart Hudson argued that an over-reliance on metrics could generate perverse incentives for regulators:
- “For example, if the CMA is measured by the number of cases it undertakes, it will be incentivised to focus on smaller and simpler cases rather than necessarily those where it could have the biggest positive impact for consumers; and if it is measured by the size of fines it imposes, it is likely to focus more on high-profile breaches of competition law by individual companies over solving structural problems affecting whole markets.”<sup>357</sup>
245. Dr Kokkinis warned that an over-reliance on quantitative metrics could create a “false picture” and allow regulators to “game” the system, by acting in ways that improve the metrics rather than meet their objectives.<sup>358</sup> The Regulatory Reform Group was concerned that sponsoring departments also have “a vested interest” in their regulators appearing to perform well, and can “select and alter various metrics to support the conclusion of strong regulatory performance”.<sup>359</sup>
246. There were also concerns that allowing regulators to design their own metrics amounted to letting them “mark their own homework”.<sup>360</sup> The

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350 [Q 53](#) (Dame Meg Hillier MP). See also written evidence from the Financial Inclusion Centre ([UKR0087](#)); [Q 33](#) (Nicola Smith)

351 Key Performance Indicators

352 [Q 26](#) (Michael Gibbons)

353 Written evidence from Ofgem ([UKR0094](#)); see also written evidence from the Institute for Government ([UKR0006](#)), written evidence from Sustainability First ([UKR0032](#))

354 Written evidence from the Financial Conduct Authority ([UKR0039](#)), written evidence from the Charity Commission ([UKR0083](#))

355 Written evidence from techUK ([UKR0077](#)); see also written evidence from Professor Robin Ellison ([UKR0005](#)), written evidence from GuildHE ([UKR0035](#))

356 [Q 36](#) (David Mendes da Costa)

357 Written evidence from Stuart Hudson ([UKR0003](#))

358 Written evidence from Dr Andreas Kokkinis ([UKR0053](#))

359 Written evidence from the Regulatory Reform Group ([UKR0078](#))

360 Written evidence from the Transparency Task Force ([UKR0056](#)); see also written evidence from GuildHE ([UKR0035](#))

Regulatory Reform Group argued that “the introduction of a layer of external, democratically accountable scrutiny would go a long way to prevent this ‘self-marking’ system from proliferating.”<sup>361</sup>

### *Possible solutions*

247. Some witnesses called for metrics that are “outcomes-focused, not process-focused”.<sup>362</sup> The Financial Inclusion Centre said regulators “should be judged on how well they make the industries they regulate serve the interests of the real economy, environment and society, not on how well they serve the interests of regulated industries.”<sup>363</sup>
248. A number of witnesses, including David Mendes da Costa and Dame Meg Hillier MP, emphasised the need for metrics that focused on consumer outcomes or perceptions.<sup>364</sup> The National Grid agreed with this, but called on Ofgem to focus on “long term ‘best value’ to consumers ... rather than ‘lowest cost’ in the short term”.<sup>365</sup>
249. Charles Randell said that at the FCA, he had tried to shift metrics towards consumer needs, but had come up against “political and business pressure” for metrics focused on “rubber-stamping things very quickly and not regulating things very hard.”<sup>366</sup>
250. In the context of the limitations of quantitative metrics, there was also a view that they should only be used alongside qualitative information.<sup>367</sup> Dr John Picton, from the University of Manchester, argued that an emphasis on “principles” alongside metrics would make it “less likely that regulators will ‘creatively comply’ with targets (i.e. meeting goals in letter but not in spirit).”<sup>368</sup>
251. The Department for Education said that “feedback from the providers being regulated on how they found the process, its timeliness, usability and impact, could help improve regulators if the information is not already routinely collected”. They suggested that possible quantitative metrics “could include the timeliness of regulations and percentage of providers or stakeholders registered satisfaction.”<sup>369</sup>
252. DBT highlighted that its recent consultation on revised statutory guidance for the Growth Duty “directly touches on performance monitoring and metrics”.<sup>370</sup> Specifically, this consultation asked respondents how the application of the Growth Duty by regulators should be monitored, by whom, and what “the most effective comparative metrics” would be to

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361 Written evidence from the Regulatory Reform Group ([UKR0078](#))

362 [Q 36](#) (David Mendes da Costa)

363 Written evidence from the Financial Inclusion Centre ([UKR0087](#)). See also written evidence from Unchecked UK ([UKR0011](#)), written evidence from Surfers Against Sewage ([UKR0033](#)), [Q 36](#) (David Mendes da Costa), written evidence from the Regulatory Reform Group ([UKR0078](#))

364 [Q 36](#) (David Mendes da Costa), [Q 54](#) (Dame Meg Hillier MP), written evidence from the Consumer Council for Water ([UKR0026](#)), written evidence from the Chartered Insurance Institute ([UKR0031](#)), written evidence from TheCityUK ([UKR0057](#)), written evidence from South West Water ([UKR0068](#)), written evidence from the Regulatory Reform Group ([UKR0078](#))

365 Written evidence from National Grid ([UKR0084](#))

366 [Q 14](#) (Charles Randell)

367 Written evidence from Dr Andreas Kokkinis ([UKR0053](#)), [Q 36](#) (David Mendes da Costa), written evidence from Regulatory Reform Group ([UKR0078](#))

368 Written evidence from Dr John Picton ([UKR0013](#))

369 Written evidence from the Department for Education ([UKR0090](#))

370 Written evidence from the Department for Business and Trade ([UKR0089](#))

assess performance against the Growth Duty.<sup>371</sup> The Government’s separate consultation on the regulatory landscape also asked respondents whether regulators “report on the right set of criteria and metrics to monitor their performance and ensure accountability”.<sup>372</sup>

253. **Producing quantitative metrics that accurately measure regulatory performance is challenging, and there is a risk that an undue focus on metrics can create perverse incentives. Nevertheless, if used in the right way, metrics can play an important role in aiding scrutiny of regulators’ performance against their objectives.**

Personal view is that this is exactly where regulatory failure starts. Some of the stakeholders above (beneficiaries) are talking about the importance of enforcement but this seems omitted from the discussion here which leaps to the very nebulous and contingent notion of 'outcomes'. And they were doing so well up until this point!!!

254. **Regulators should use metrics that are focused on outcomes measured against regulatory objectives. Quantitative metrics should be used alongside qualitative assessment, particularly where objectives or activities cannot be measured numerically. Where relevant, regulatory performance metrics should be designed with consumer interests at their heart.**

255. **Leaving the designation of metrics solely to the regulators themselves risks allowing them to mark their own homework. To counteract this tendency, there will need to be additional scrutiny of the metrics used by regulators, preferably through the new ‘Office for Regulatory Performance’ we have recommended earlier in this report.**

## Engagement

### *Businesses and regulated entities*

256. GuildHE emphasised that regulators “should have mechanisms to hear and take on board the views of those they regulate”.<sup>373</sup> From a business perspective, Kevin Parry from Nationwide emphasised that regulators’ ability to meet their objectives “largely depends on the practicalities of commercial firms being able to deliver these changes”.<sup>374</sup>

257. Virginia Acha said that “productive dialogue” between regulators and those they regulate was “essential”.<sup>375</sup> Dame Patricia Hodgson also emphasised that, while both parties have distinct roles, “there must be mutual respect: it is no good falling out, because regulation will not work if there is no mutual respect”.<sup>376</sup>

258. This emphasis on engagement, however, was tempered by concerns over the risk of regulators being “captured” by industry. Dame Patricia Hodgson said that “one of the biggest problems for regulators is the sheer economic power of the big companies and the way they go into the departments and see Ministers much faster than the regulators”, adding that, as a regulator, “your challenge is not to be overwhelmed by the resource and power of the biggest

371 Department for Business and Trade, *Smarter Regulation, Smarter Regulation: Regulating for Growth* (22 November 2023): <https://assets.publishing.service.gov.uk/media/655e18c45395a900124635f1/consultation-on-the-growth-duty-draft-statutory-guidance.pdf> [accessed 02 January 2024]

372 Department for Business and Trade, *Smarter regulation and the regulatory landscape* (updated 27 December 2023): <https://www.gov.uk/government/calls-for-evidence/smarter-regulation-and-the-regulatory-landscape> [accessed 02 January 2024]

373 Written evidence from GuildHE (UKR0035); see also written evidence from the Association of the British Pharmaceutical Industry (UKR0020)

374 Written evidence from Kevin Parry (UKR0018)

375 Q 26 (Virginia Acha)

376 Q 59 (Dame Patricia Hodgson)

Mutual respect is important but in a regulatory context it is not generated through dialogue but systemic communication.

company in the sector.”<sup>377</sup> John Penrose MP thought that the risk of capture was “a little bit higher” in individual sector regulators than in cross-cutting regulators such as the CMA.<sup>378</sup>

- I would disagree with this, especially where enforcement is applied because ultimately the courts provide the accountability mechanism. The problem is actually accountability to the beneficiaries of regulatory systems.
259. Representatives of businesses recognised these concerns. Virginia Acha stressed that a regulator “is not here to make my life easy”, while Michael Gibbons said that regulators were not “responsible and accountable to the people they are regulating”.<sup>379</sup>
260. Filippo Pollara, Senior Policy Adviser at the Federation of Small Businesses, said that “when dealing with regulators, small firms just want to know what they need to do in very clear terms”. Virginia Acha stressed that “consistency, predictability and clarity are watchwords, whether you are a very large company or a very small company”.<sup>380</sup>
261. We heard from the Association of the British Pharmaceutical Industry (ABPI) that “the regulatory environment is key to unlocking growth, attracting, and retaining inward investment to the UK”.<sup>381</sup> Virginia Acha agreed: “for life sciences, I cannot think of a single place in the world where you have a thriving life sciences cluster and you do not have a world-leading regulator, because there is a symbiosis.”<sup>382</sup>
262. Some witnesses were positive about regulators’ engagement with business. Filippo Pollara said that while the experience of regulators “varies” for SMEs, “many regulators have understood the need to set out more clearly what a small business needs to do”, singling out the HSE and the ICO.<sup>383</sup>
263. Michael Gibbons noted that Ofgem’s approach to seeking industry views on the Electricity System Operator “works quite well”. Marcus Bokkerink said that the “vast majority of businesses” provide very positive input into the CMA’s work.<sup>384</sup>
264. Other witnesses expressed reservations. Dr Angus M. Marshall, a Lecturer in Computer Science at the University of York, argued that when regulators consult businesses, their working groups “tend to be dominated” by larger organisations, creating “a very real danger” that regulations are designed to meet the needs of larger businesses rather than smaller ones.<sup>385</sup> There were also those, such as the Cancer Prevention and Education Society, who felt that “regulators are far too close to the companies they are regulating”.<sup>386</sup>
265. BUUK Infrastructure thought that regulators’ consultations were “often undertaken because there is a statutory responsibility to consult, rather than because the regulator wishes to listen to the views of respondents”.<sup>387</sup>

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377 [Q 59](#) (Dame Patricia Hodgson)

378 [Q 41](#) (John Penrose MP)

379 [Q 21](#) (Virginia Acha); [Q 26](#) (Michael Gibbons)

380 [Q 21](#) (Filippo Pollara, Virginia Acha)

381 Written evidence from the Association of the British Pharmaceutical Industry ([UKR0020](#))

382 [Q 26](#) (Virginia Acha)

383 [Q 21](#) (Filippo Pollara)

384 [Q 77](#) (Marcus Bokkerink)

385 Written evidence from Angus M. Marshall ([UKR0024](#))

386 Written evidence from the Cancer Prevention and Education Society ([UKR0019](#)); see also written evidence from Timothy Bush ([UKR0014](#)), written evidence from Angus M. Marshall ([UKR0024](#)), written evidence from the Transparency Task Force ([UKR0056](#))

387 Written evidence from BUUK Infrastructure ([UKR0044](#))

266. In terms of improved industry engagement, several organisations identified surveys of businesses and other regulated entities by regulators, and other feedback mechanisms, as a useful tool.<sup>388</sup> The Department for Education, with reference to the regulators that it sponsors, noted that feedback from providers “could help improve regulators”.<sup>389</sup>
267. DBT stated the work of regulators “plays a vital role in ... setting the right frameworks for businesses to thrive”.<sup>390</sup> The Department’s recent consultation on the regulatory landscape includes questions on whether respondents have “sufficient opportunity to input into decision making by UK regulators processes”.<sup>391</sup>
268. **The relationship between regulators and those they regulate needs to be finely balanced, as the danger of regulatory capture is ever present. However, there must be an open and frank dialogue between regulators and those they regulate, providing clarity for industry on regulatory requirements and giving regulators a better picture of developments in their sectors.**
269. *Where they do not do so already and where resources allow, regulators should survey those they regulate, ideally annually. Summaries of the results of these surveys should be made public.*

*The consumer voice*

270. The work of many regulators, particularly the economic regulators<sup>392</sup>, has an important consumer dimension—for instance, water bill payers in the case of Ofwat, or broadband customers in the case of Ofcom. The extent to which the voice and priorities of consumers drives regulators’ work emerged as an important theme of our inquiry.<sup>393</sup>
271. Regulators have a variety of mechanisms for gathering consumer input. Charles Randell explained that the FCA has a consumer panel, a consumer network, and a national outreach programme, as well as a new consumer duty it has placed on firms which he said “is leading to a fundamental change” in the financial services sector. He also highlighted that, at the outset of his chairmanship, he had pledged to “meet all the consumer groups before I met a single business”.<sup>394</sup>
272. For the CMA, Marcus Bokkerink claimed that the organisation had “stepped up materially” its prioritisation of consumer voice. For example, he highlighted that “every board meeting now has to start with an external voice”, adding that the CMA was also “stepping up the frequency and depth

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388 Written evidence from TheCityUK (UKR0057), written evidence from techUK (UKR0077), written evidence from National Grid (UKR0084)

389 Written evidence from the Department for Education (UKR0090)

390 Written evidence from the Department for Business and Trade (UKR0089)

391 Department for Business and Trade, *Smarter regulation and the regulatory landscape* (updated 27 December 2023): <https://www.gov.uk/government/calls-for-evidence/smarter-regulation-and-the-regulatory-landscape> [accessed 02 January 2024]

392 The economic regulators are those working in industries that would otherwise be monopolies, such as Ofwat, Ofgem and Ofcom.

393 It should be noted, however, that the consumer dynamic is not necessarily relevant for all regulators. See written evidence from Dr Andreas Kokkinis (UKR0053)

394 Q 16 (Charles Randell)

of the conversations we have with various consumer bodies and third-sector organisations”.<sup>395</sup>

273. David Mendes da Costa said that the cultural approach of different regulators to consumers varied, with some taking “a pro-market approach”—for example, Ofcom explicitly states that it operates with a bias against regulatory intervention.<sup>396</sup> Other regulators, he argued, are “more open” to consumer input.<sup>397</sup>
274. Several witnesses, however, felt that consumer input into regulators was insufficient. Lord Tyrie, the former chair of the CMA, said that consumers were “completely disempowered”, while the Regulatory Reform Group said that “the voice and perspective of consumers is lacking at all stages of the regulatory decision-making process”.<sup>398</sup> Dame Patricia Hodgson said that while regulators do often have internal consumer bodies, these are “one of many” voices.<sup>399</sup>
275. In particular, some witnesses felt that there was an imbalance between the attention regulators pay to consumer voices compared to businesses.<sup>400</sup> David Mendes da Costa explained:
- “There is a numerical imbalance: there are literally more voices on the side of industry—large and medium-sized firms act as a voice and trade bodies can—whereas on the consumer side, it tends to be a single statutory advocate or a handful of voices. Ironically, the number of consumers numerically is much larger but the number of voices representing them is much smaller. There are also fewer resources available to consumer voices ... we have to take it almost as a given that there will be that imbalance numerically and in resource, and look for different mechanisms to try to rebalance it.”<sup>401</sup>
276. In some areas, this imbalance is partly addressed through statutory provisions for consumer advocacy. Citizens Advice explained that, in the post and energy markets, they are funded by an industry levy to act as the “designated statutory consumer advocate”, which means that they have “more resources available to amplify the voice of consumers”.<sup>402</sup>
277. However, other sectors such as telecommunications do not have a statutory consumer advocate, and Citizens Advice emphasised that in such sectors they “cannot replicate” the same level of support. They felt that the absence of statutory advocacy in such sectors exacerbated a trend where “consumer advocates are treated as another stakeholder to be managed rather than as an integrated part of the decision-making process.”<sup>403</sup>
278. Citizens Advice set out a case study of the impact of insufficient consumer focus from a regulator:

395 Q 77 (Marcus Bokkerink)

396 Q 30 (David Mendes da Costa); see also Ofcom, ‘Policies and guidelines’ (2024): <https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines> [accessed 8 January 2024]

397 Q 30 (David Mendes da Costa)

398 Q 18 (Lord Tyrie), written evidence from the Regulatory Reform Group (UKR0078)

399 Q 62 (Dame Patricia Hodgson)

400 Written evidence from Angus M. Marshall (UKR0024), written evidence from the Transparency Task Force (UKR0056)

401 Q 30 (David Mendes da Costa)

402 Written evidence from Citizens Advice (UKR0063); see also Q 30 (David Mendes da Costa)

403 Written evidence from Citizens Advice (UKR0063); see also Q 30 (David Mendes da Costa)

Which really goes to the comments made above.

“We first drew attention to the fact that parcel deliveries don’t always work for disabled people in 2018. In 2019 we wrote a report specifically about how disabled consumers should be able to specify their needs. Almost 3 years later Ofcom decided it would introduce new consumer protections for disabled people. This new consumer protection came into force on 1 November this year. It took half a decade from when Citizens Advice raised the issue”.<sup>404</sup>

279. Several witnesses set out proposals to improve consumer empowerment in regulatory decision-making.<sup>405</sup> The Institute of Customer Service called for “a joined-up approach across the regulators regarding key customer satisfaction measures”.<sup>406</sup> Citizens Advice recommended statutory consumer advocates in all essential markets and for responses from consumer advocates to be “given greater weight than industry responses in the consultation process”.<sup>407</sup>
280. Citizens Advice further called for the consumer voice to be integrated into regulators’ decision-making.<sup>408</sup> Reinforcing this, David Mendes da Costa emphasised that consumers should not be treated as “just another stakeholder”.<sup>409</sup> Mendes da Costa also praised the FCA’s new consumer duty as “path leading”, and suggested there was “an awful lot of merit” in looking at similar duties in other sectors.<sup>410</sup>
281. **The difference in resources between individual consumers and businesses has the potential to distort the feedback and representations that regulators receive. In some areas, this potential gap is at least partially remedied by statutory provision for independent consumer advocacy, as seen in the water, postal and energy sectors. We are concerned that some sectors, such as telecommunications, are not represented by statutory consumer advocates, limiting the resources consumer bodies have to act in these areas.**
282. ***As part of any Public Bodies Reviews of regulators, the Government should consider and explain how consumers are represented in each regulator’s decision-making. Where there is no statutory provision for independent consumer advocacy in sectors that have a substantial retail element, the Government should establish or designate a statutory consumer advocate or explain why it has chosen not to do so.***

*Input from workers*

283. Nicola Smith explained that there are three main ways in which trade unions engage with regulators.<sup>411</sup>
- Labour market enforcement: trade unions engage with regulators that enforce labour market regulations and employment rights, notably the Employment Agency Standards Inspectorate (EAS), the Gangmasters

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404 Written evidence from Citizens Advice ([UKR0063](#))

405 Written evidence from the Consumer Council for Water ([UKR0026](#)), written evidence from Dame Patricia Hodgson ([UKR0071](#))

406 Written evidence from the Institute of Customer Service ([UKR0059](#))

407 Written evidence from Citizens Advice ([UKR0063](#))

408 Written evidence from Citizens Advice ([UKR0063](#))

409 [Q 30](#) (David Mendes da Costa)

410 [QQ 30–31](#) (David Mendes da Costa)

411 [Q 30](#) (Nicola Smith); see also written evidence from the Trades Union Congress ([UKR0047](#))

and Labour Abuse Authority (GLAA), the Equality and Human Rights Commission (EHRC), and the HSE.

- Regulators’ own workforces: Employees of individual regulators may be represented by trade unions, and the latter may therefore have “engagement with, and views on, the effectiveness of the UK’s regulators”.
- The Certification Officer: the regulator of trade unions.

284. In written evidence, the TUC stated that “the voice of trade unions and workers has been steadily excluded from the regulators that we deal with”. For example, “the TUC previously had representation in the governance structures at the GLAA. This was scrapped.”<sup>412</sup>

285. In addition, Nicola Smith said that even at regulators where there are board seats reserved for worker representatives, such as the HSE, concerns have been expressed “about the extent to which those seats reflect people who are able to speak credibly to the real-world workforce experience”.<sup>413</sup> Prospect reported that some of the Government’s appointments of employee representatives to the HSE Board had “not followed the longstanding protocol of preferred employee nominees being nominated from the TUC.”<sup>414</sup>

286. Nicola Smith said that, while trade unions can provide consultation responses and feedback to regulators as other stakeholders on, “it should not be via that route that the voice of people at work is involved in determining the scope of labour market regulation. There should be a formal strategic process”.<sup>415</sup>

287. Nicola Smith also felt that the governance of regulators is not set up in such a way that the concerns of workers are “integrated” into the way regulators carry out their work.<sup>416</sup> The TUC’s recommendation for addressing this was for regulators to have “tripartite governance structures”, where union representation is integrated into decision-making.<sup>417</sup>

288. ***We heard that labour market regulators should more formally integrate the voice of workers into their decision-making, specifically through tripartite governance structures. The Government should set out its views on this proposal in response to this report.***

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412 Written evidence from the Trades Union Congress ([UKR0047](#))

413 [Q 32](#) (Nicola Smith)

414 Written evidence from Prospect ([UKR0029](#))

415 [Q 30](#) (Nicola Smith)

416 [Q 30](#) (Nicola Smith)

417 Written evidence from the Trades Union Congress ([UKR0047](#))

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### Background

1. We were disappointed by the Department for Business and Trade's limited engagement with our inquiry. The Department did not provide the Committee with oral ministerial representation, despite ample notice. Its subsequent written submission was brief and, importantly, did not answer the questions in the Committee's call for evidence in any detail. We are unconvinced by the Department's explanation that ongoing consultations prevented it from engaging with our inquiry further. (Paragraph 22)
2. Given the widespread concerns we heard about the accountability of regulators, it is all the more frustrating that the Department acted in a manner which hampered the Committee's own attempts to hold the Government to account for its important role in this area. We intend to follow up with the Department following their response to this report. (Paragraph 23)

### Duties and objectives

3. Some regulators have been given too many statutory duties, objectives and issues to have regard to by government and Parliament without a clear sense of priority. In the context of finite resources, this makes it difficult for a regulator to achieve each in turn and increases the potential for tensions and conflict between them. That said, there are cases of good practice, where regulators have been given singular or primary objectives, providing a clearer sense of priorities. (Paragraph 42)
4. *It is welcome that the Government is actively considering these issues as part of its Smarter Regulation programme and plans to review the duties of each of the economic regulators. In doing so, it should focus their objectives on their core role and avoid overloading them with too many objectives, especially those which they should "consider", "take account of" or "have regard to". Where there are political or distributional trade-offs between those objectives that remain, the Government should provide clarity on how regulators should prioritise between them.* (Paragraph 43)
5. The Government should undertake similar reviews of the duties of all regulators when they are reviewed as part of the Public Bodies Review Programme. These reviews should aim to streamline the duties and objectives of regulators and provide the greatest possible prioritisation in the event of conflicts. (Paragraph 44)

### Independence, strategic guidance and appointments

6. The evidence we received highlighted the value of regulatory independence. Independence enables regulators to act flexibly in response to emerging challenges and allows them the freedom to speak truth to power. It also supports business confidence and investment by separating regulatory decisions from preferential political treatment and the electoral cycle. (Paragraph 52)
7. *Many regulators were keen to stress their independence from the Government. In practice, however, the level of independence of the UK's regulators varies, and there are concerns in some quarters at the Government's ability to interfere in some of their operations. Where regulators are insufficiently independent, or perceived as such, it undermines their ability to regulate*

objectively, free from undue political influence and accountable to the public interest. This results in a loss of trust on the part of both consumers and regulated entities. (Paragraph 61)

8. There is a trade-off between the operational independence of regulators and the need for governments to provide them with strategic advice, especially in areas where it is difficult to distinguish between regulatory issues and policy issues. In these cases, it is preferable that clarity is provided through statutory duties and objectives, but in the absence of this clarity, the Government can usefully provide input through strategic steers or policy statements. (Paragraph 81)
9. *When setting up new regulators or conducting reviews of existing ones, the Government should state clearly what it has delegated to regulators to decide independently, and in which areas it will be appropriate for the Government to provide direction. The Government should then adhere to this delineation. If the Government is not content that a responsibility has been delegated, it should legislate to end this delegation, rather than attempting to influence regulators' decisions.* (Paragraph 82)
10. The Government's strategic steers and policy statements to regulators often do not provide adequate clarity on how to make trade-offs between their objectives, especially in relation to political and distributional issues, such as balancing the affordability of utility bills with the need for future investment. They are often overly detailed and give no sense of priority between different objectives or areas, which does little to provide clarity. (Paragraph 83)
11. The Government must not duck responsibility by delegating political or distributional decisions to regulators without clear objectives or any sense of priority. (Paragraph 84)
12. *The Government should ensure that it provides a strategic steer or policy statement to any regulator facing political or distributional trade-offs in its duties and objectives. These documents should be clear, concise and provide high-level guidance on how to prioritise between any duties or objectives that may conflict. We see merit in such guidance being issued once a Parliament, while noting the need for there to be flexibility in the face of urgent issues or crises.* (Paragraph 85)
13. *Regulators' boards should be given the power to seek explicit guidance from the Government on strategic policy direction and distributional choices. The Government should bring forward proposals for a specific mechanism to achieve this.* (Paragraph 86)
14. The independence of regulators can be affected by the process of appointing or re-appointing senior staff and board members. We are concerned at the perception that the appointment and reappointment of some regulatory leaders reflects their political loyalties more than their suitability for the role. Similar concerns apply where senior staff or board members have not been reappointed because of differences with the government of the day. (Paragraph 104)
15. Given these concerns, it would be desirable for select committees to play a greater role in scrutinising public appointments to regulatory positions. While some regulatory appointments are subject to pre-appointment hearings and scrutiny, this is not the case for all appointments and varies between regulators. It is also concerning that the Government has taken regulatory

MfR material here.

appointments forward in cases where the relevant select committee has refused to endorse a candidate. (Paragraph 105)

16. *Where a public appointment to the Chair or Chief Executive of a regulator is not currently subject to pre-appointment scrutiny by a select committee, and a select committee requests that pre-appointment scrutiny is extended to it, the Government should grant the request.* (Paragraph 106)
17. *Where the Government decides not to reappoint the Chair or Chief Executive of a regulator, it should publish its explanation for this. Where the Government chooses to appoint a candidate who has not been endorsed by the relevant select committee, it should also publish why it has done so.* (Paragraph 107)
18. It is unacceptable that appointments to regulators' boards have been beset by delays. This hampers the governance of regulators and makes these positions less attractive due to the length of time it takes to be confirmed. (Paragraph 111)
19. *The Government must make more timely appointments to regulators' boards. In its response to this report, the Government should set out why it believes these delays are taking place and what actions it intends to take to rectify the situation.* (Paragraph 112)
20. *The boards of regulators, including their non-executive directors, play a key role in setting their strategic direction and holding their executives to account. We therefore welcome that the Competition and Markets Authority conducts regular reviews of the work of its Board, on both an internal and an external basis. Where they do not do so already, regulators should commission and publish independent reviews of the work and governance of their boards every three years.* (Paragraph 116)

Material for MFR

### Resources and skills

21. Some regulators can raise their own revenues through levies and charges. However, others depend on the Government for their funding. Those funding decisions inevitably influence regulators' ability to carry out their functions independently. (Paragraph 129)
22. We are concerned that a number of regulators appear not to have sufficient resources to carry out their existing functions effectively, while others have had their responsibilities extended without an increase in resources to match. Regulators cannot regulate efficiently and effectively without adequate funding, which in turn risks hampering the success of the industries they regulate. (Paragraph 130)
23. *When carrying out Public Body Reviews of each regulator, the Government should publish an assessment of whether the regulator has the necessary resources to carry out its functions. As part of these reviews, the Government should consider and assess whether there are feasible opportunities for granting regulators the power to raise their own revenues.* (Paragraph 131)
24. *When regulators are given additional responsibilities, they should publish an assessment of the resources necessary to fulfil them and whether they currently have sufficient capacity. If this assessment shows that the regulator does not have the necessary resources or the ability to raise them, the Government should set out how it will ensure adequate resourcing.* (Paragraph 132)

25. While there are many high-quality staff at the UK's regulators, there are skills gaps in some areas, particularly in areas of rapid change such as digital and technological skills. The ability of regulators to understand, manage and, if necessary, enforce against activities in their areas of responsibility will be impaired if they cannot access these skills. (Paragraph 153)
26. Regulators face a challenge to recruit and retain more specialised staff due to the higher rates of pay available for the same skills in the private sector, and in some instances at other regulators. Industry secondees may help to address this challenge, but create potential conflicts of interest which must be managed. (Paragraph 154)
27. *When conducting Public Body Reviews of regulators, the Government should assess whether regulators can attract the necessary staff within their current funding regimes and pay scales. If they are unable to do so, the Government should allow regulators greater discretion to move outside of those pay scales.* (Paragraph 155)
28. *Where regulators face common issues and struggle to recruit the necessary staff individually, they should consider pooling their resources. The Government should consider what measures it could take to facilitate this pooling.* (Paragraph 156)
29. *The Committee sees merit in regulators setting up centres of excellence to pool their resources. Seconding industry staff to centres of excellence could help reduce the potential for conflicts of interest by providing an intermediate step between them and their sector's regulator.* (Paragraph 157)

### Accountability

30. Regulators exercise substantial and, in some cases, increasing powers on behalf of Parliament and the public. Yet as a consequence of their independence, they do not face the same democratic checks and balances as ministers. It is therefore essential for the legitimacy of independent regulators that they are held to account for the use of this delegated power. (Paragraph 163)
31. Regulators should be held to account for aspects of their performance by their sponsoring departments within government. Given the importance of regulatory independence, accountability cannot be left to the Government alone, and Parliament must play a critical role. (Paragraph 171)
32. *The Government can, however, play a role in facilitating parliamentary scrutiny. For example, there is currently no comprehensive list of the UK's regulators, their responsibilities, and their oversight arrangements. To assist Parliament in holding regulators accountable, the Government should establish, publish, and maintain such a list, including timely information on regulators' public engagement with parliamentary select committees.* (Paragraph 172)
33. Parliamentary scrutiny has made a positive contribution in holding regulators to account. However, there is a perception in some quarters, with which the Committee concurs, that this scrutiny has tended to be ad hoc and in response to events rather than routine and systematic. (Paragraph 192)
34. Regulatory performance is a complex area, and Parliament's committees do not currently have the time or resources to routinely monitor the performance of around 90 regulators. Although it is for parliamentary committees to decide how they spend their time, we are nonetheless concerned that this situation has led to a lacuna in scrutiny. (Paragraph 193)

35. There is some merit in the idea, expressed by several witnesses, of a new joint committee to scrutinise all regulators. However, it is not clear to us that a new committee would avoid the constraints that have hindered other committees, including this Committee, from undertaking systematic and routine scrutiny of all regulators. To perform such a major undertaking adequately, any new committee would need access to significant additional resources and expertise, well beyond that of a typical parliamentary committee. (Paragraph 194)
36. We note that existing mechanisms for parliamentary scrutiny can be flexible. For example, in an innovative use of investigative parliamentary scrutiny, the Treasury Committee embedded its Specialist Advisers into a regulator to investigate its work on two occasions in 2011 and 2013. We draw this potential precedent to the attention of other parliamentary committees, so that they can consider exploring it further. (Paragraph 195)
37. We welcome the recent establishment of the House of Lords Financial Services Regulation Committee, which we anticipate will strengthen parliamentary scrutiny of the financial services regulators. (Paragraph 196)
38. The National Audit Office plays an important and valuable role in scrutinising regulators' use of public money. However, its remit focuses on value for money, across the whole of government. Therefore, we do not believe that expanding the NAO's remit to include regular and systematic scrutiny of overall regulatory performance is the way forward. As well as having significant resource implications, it would risk complicating the clarity of the NAO's current role. (Paragraph 204)
39. We welcome the work of the National Infrastructure Commission in examining the work of the utilities regulators. We agree with the Commission's assessment that they would not be the appropriate body, either in terms of remit or of resources, to conduct systematic and wide-ranging scrutiny of the regulators they work with. (Paragraph 210)
40. *The expertise of the National Infrastructure Commission should be put to further use by Parliament in its scrutiny of the utilities regulators. To that end, we call on the Government to place the Commission on a statutory footing, with the ability to examine government policy outside of its National Infrastructure Assessments. This would enhance the Commission's ability to report independently on long-term infrastructure challenges, including where these are the result of insufficient investment and maintenance.* (Paragraph 211)
41. The size and complexity of the UK's regulatory landscape, and the limited resources available to Parliament, have led to an accountability gap, particularly as far as routine and systematic scrutiny of regulators is concerned. Several of our witnesses called for the creation of a new body to address this gap. (Paragraph 221)
42. *The Government should create an independent statutory body analogous to the National Audit Office to advise and support Parliament and its select committees in holding regulators to account for their performance in a routine and systematic manner. We suggest that this body could be named the 'Office for Regulatory Performance'.* (Paragraph 222)
43. *As in the case of the National Audit Office, such a body should be accountable to Parliament, rather than the Government. Its remit will need to be designed carefully*

Relevant for MfR to consider as part of its work.

*so that it complements, rather than conflicts, with existing parliamentary scrutiny of regulators. It would need specialist, experienced staff to aid Parliament in conducting effective scrutiny. (Paragraph 223)*

44. *We envisage that the new body would be funded from Parliament's budget, like the National Audit Office. The Government should ensure a commensurate increase in Parliament's budget to properly fund the new scrutiny body. (Paragraph 224)*
45. *The new body should publish its reports, providing useful insight to Parliament, the Government and the public. These reports should become a key element in committee scrutiny of the performance of regulators, in a similar fashion to the Public Accounts Committee's use of the reports of the National Audit Office. (Paragraph 225)*

### Transparency and engagement

46. The transparency of regulators varies. Publishing large volumes of information, as some regulators do, is not the same as effective transparency. In fact, this approach can actively hinder scrutiny by burying key information, or by presenting it in inaccessible formats. We also note that regulators have limited incentives to highlight their own performance failures where they are not required to do so. (Paragraph 237)

This kind of work appears to fall squarely within the remit of MfR to drive - including through creation of reporting expectations (and materials which support that reporting e.g. guidance and templates) and the monitoring of that.

47. *Effective scrutiny depends on information being both available and accessible. Regulators should review how they publish and present performance information. In doing so, they should ensure performance information is presented in a prominent and accessible way, and in clear, succinct and simple language that the public and parliamentarians can understand. These publications should explain how regulators have complied with their objectives, including matters they are required to 'have regard to'. Where relevant, they should also include information on the enforcement action regulators take (or choose not to take) against non-compliance, and an assessment of the effectiveness of this. (Paragraph 238)*
48. Producing quantitative metrics that accurately measure regulatory performance is challenging, and there is a risk that an undue focus on metrics can create perverse incentives. Nevertheless, if used in the right way, metrics can play an important role in aiding scrutiny of regulators' performance against their objectives. (Paragraph 253)
49. *Regulators should use metrics that are focused on outcomes measured against regulatory objectives. Quantitative metrics should be used alongside qualitative assessment, particularly where objectives or activities cannot be measured numerically. Where relevant, regulatory performance metrics should be designed with consumer interests at their heart. (Paragraph 254)*
50. *Leaving the designation of metrics solely to the regulators themselves risks allowing them to mark their own homework. To counteract this tendency, there will need to be additional scrutiny of the metrics used by regulators, preferably through the new 'Office for Regulatory Performance' we have recommended earlier in this report. (Paragraph 255)*
51. The relationship between regulators and those they regulate needs to be finely balanced, as the danger of regulatory capture is ever present. However, there must be an open and frank dialogue between regulators and those they regulate, providing clarity for industry on regulatory requirements and giving regulators a better picture of developments in their sectors. (Paragraph 268)

Comes back to standard expectations on the part of regulators for providing information about their own performance.

52. *Where they do not do so already and where resources allow, regulators should survey those they regulate, ideally annually. Summaries of the results of these surveys should be made public. (Paragraph 269)*

53. The difference in resources between individual consumers and businesses has the potential to distort the feedback and representations that regulators receive. In some areas, this potential gap is at least partially remedied by statutory provision for independent consumer advocacy, as seen in the water, postal and energy sectors. We are concerned that some sectors, such as telecommunications, are not represented by statutory consumer advocates, limiting the resources consumer bodies have to act in these areas. (Paragraph 281)

54. *As part of any Public Bodies Reviews of regulators, the Government should consider and explain how consumers are represented in each regulator's decision-making. Where there is no statutory provision for independent consumer advocacy in sectors that have a substantial retail element, the Government should establish or designate a statutory consumer advocate or explain why it has chosen not to do so. (Paragraph 282)*

55. *We heard that labour market regulators should more formally integrate the voice of workers into their decision-making, specifically through tripartite governance structures. The Government should set out its views on this proposal in response to this report. (Paragraph 288)*

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS

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### Members

Lord Agnew of Oulton  
 Baroness Bowles of Berkhamsted  
 Lord Burns  
 Viscount Chandos  
 Lord Clement-Jones  
 Lord Cromwell  
 Lord Gilbert of Panteg  
 Lord Hollick  
 Baroness McGregor-Smith  
 Baroness O’Grady  
 Lord Reay  
 Baroness Taylor of Bolton

### Declaration of Interests

Lord Agnew of Oulton  
*Interests as set out in the Register of Lords’ Interests*

Baroness Bowles of Berkhamsted  
*Interests as set out in the Register of Lords’ Interests*

Lord Burns  
*Past Chair of Ofcom (1 January 2018–31 December 2020)*

Viscount Chandos  
*Trustee (until 31 December 2023), Esmee Fairbairn Foundation (regulated by the Charity Commission)*  
*Trustee (until 31 December 2023), Ernest Kleinwort Charitable Trust (regulated by the Charity Commission)*  
*Vice chair and trustee, London Academy of Music and Dramatic Art (LAMDA) (regulated by the Charity Commission, the OfS and Ofqual)*  
*Chair, Credit Services Association (works, on behalf of its members, with the FCA and has a subsidiary regulated by Ofsted)*  
*Chair, Thomson Foundation (regulated by the Charity Commission)*

Lord Clement-Jones  
*Chair of the board of the Trust Alliance Group, which provides Ombudsman services in energy and telecoms*

Lord Cromwell  
*Interests as set out in the Register of Lords’ Interests*

Lord Gilbert of Panteg  
*Member of the Board of the Electoral Commission*

Lord Hollick  
*Interests as set out in the Register of Lords’ Interests*

Baroness McGregor-Smith  
*Interests as set out in the Register of Lords’ Interests*

Baroness O’Grady  
*Interests as set out in the Register of Lords’ Interests, (including former general secretary of the TUC and membership of the Court of the Bank of England), no ownership of shares.*

Lord Reay  
*Interests as set out in the Register of Lords’ Interests*

Baroness Taylor of Bolton  
*Interests as set out in the Register of Lords’ Interests*

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://committees.parliament.uk/work/7958/uk-regulators/publications/written-evidence/> and available for inspection at the Parliamentary Archives (020 7219 3074). Evidence is received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

|    |  |                           |
|----|--|---------------------------|
| *  | Gareth Davies, Comptroller and Auditor-General, National Audit Office  | <a href="#">QQ 1–12</a>   |
| *  | Richard Sullivan-Jones, Senior Audit Manager, National Audit Office  | <a href="#">QQ 1–12</a>   |
| *  | Lord Tyrie, former Chair, House of Commons Treasury Committee, and former Chair, Competition and Markets Authority | <a href="#">QQ 13–20</a>  |
| ** | Charles Randell, Senior Consultant at Slaughter and May and former Chair, Financial Conduct Authority              | <a href="#">QQ 13–20</a>  |
| ** | Michael Gibbons CBE, Senior Non-Executive Director, Bluefield Solar Income Fund                                    | <a href="#">QQ 21–29</a>  |
| *  | Filippo Pollara, Senior Policy Adviser, Federation of Small Businesses   | <a href="#">QQ 21–29</a>  |
| *  | Virginia Acha, Associate Vice-President, Global Regulatory Policy, MSD   | <a href="#">QQ 21–29</a>  |
| ** | Nicola Smith, Head of Rights, Social and Economics Department, Trades Union Congress                               | <a href="#">QQ 30–38</a>  |
| ** | David Mendes da Costa, Principal Policy Manager, Citizens Advice   | <a href="#">QQ 30–38</a>  |
| *  | John Penrose MP  | <a href="#">QQ 39–48</a>  |
| *  | Dame Meg Hillier MP, Chair, Public Accounts Committee  | <a href="#">QQ 49–58</a>  |
| ** | Dame Patricia Hodgson, Deputy Chair, Policy Exchange, and former Chair, Ofcom                                      | <a href="#">QQ 59–69</a>  |
| ** | Marcus Bokkerink, Chair, Competition and Markets Authority (CMA)   | <a href="#">QQ 70–85</a>  |
| ** | Sir John Armitt CBE, Chair, National Infrastructure Commission   | <a href="#">QQ 86–106</a> |
| ** | James Heath, Chief Executive, National Infrastructure Commission   | <a href="#">QQ 86–106</a> |

### Alphabetical list of all witnesses

- |   |   |
|---|---|
| * | Virginia Acha, Associate Vice-President, Global Regulatory Policy, MSD ( <a href="#">QQ 21–29</a> ) |
|---|---|

|    |   |                         |
|----|---|-------------------------|
|    | Professor Oles Andriychuk, Professor of Law at the University of Newcastle                              | <a href="#">UKR0048</a> |
|    | Dr Emmanuel Nsiah Amoako, Lecturer in Forensic Science at the University of the West of England         | <a href="#">UKR0065</a> |
| ** | Sir John Armitt CBE, Chair, National Infrastructure Commission ( <a href="#">QQ 86–106</a> )            | <a href="#">UKR0095</a> |
|    | The Association of Mortgage Intermediaries (AMI)  | <a href="#">UKR0049</a> |
|    | The Association of the British Pharmaceutical Industry (ABPI)   | <a href="#">UKR0020</a> |
|    | The Bank of England   | <a href="#">UKR0073</a> |
|    | The Bar Council   | <a href="#">UKR0086</a> |
|    | Professor Philip Bennett, Visiting Professor of Pensions Law, Durham Law School                         | <a href="#">UKR0051</a> |
|    | Professor Julia Black, Professor of Law, London School of Economics and Political Science               | <a href="#">UKR0034</a> |
|    | Blueprint for Water   | <a href="#">UKR0064</a> |
| ** | Marcus Bokkerink, Chair, Competition and Markets Authority (CMA) ( <a href="#">QQ 70–85</a> )           | <a href="#">UKR0079</a> |
|    | Lord Bridges of Headley   | <a href="#">UKR0093</a> |
|    | The Building Societies Association  | <a href="#">UKR0052</a> |
|    | Timothy Bush, Head of Governance and Financial Analysis, The Pensions & Investment Research Consultants | <a href="#">UKR0014</a> |
|    | BUUK Infrastructure   | <a href="#">UKR0044</a> |
|    | Cadent Gas Limited  | <a href="#">UKR0067</a> |
|    | The Cancer Prevention and Education Society   | <a href="#">UKR0019</a> |
|    | The Care Quality Commission (CQC)   | <a href="#">UKR0030</a> |
|    | Centre for Competition Policy (CCP)   | <a href="#">UKR0022</a> |
|    | The Centre for Policy Studies   | <a href="#">UKR0076</a> |
|    | The Chartered Institute of Management Accountants (CIMA)  | <a href="#">UKR0046</a> |
|    | The Chartered Insurance Institute   | <a href="#">UKR0031</a> |
|    | Citizens Advice   | <a href="#">UKR0063</a> |
|    | The Civil Aviation Authority  | <a href="#">UKR0015</a> |
|    | The Civil Society Alliance  | <a href="#">UKR0021</a> |
|    | The Charity Commission  | <a href="#">UKR0083</a> |
|    | Desmond Chin  | <a href="#">UKR0080</a> |
|    | TheCityUK   | <a href="#">UKR0057</a> |
|    | Professor Iain Clacher  | <a href="#">UKR0051</a> |

|    |  |                         |
|----|--|-------------------------|
| ** | The Competition and Markets Authority (CMA) ( <a href="#">QQ 70–85</a> )                                     | <a href="#">UKR0079</a> |
|    | The Consumer Council for Water (CCW)   | <a href="#">UKR0026</a> |
| ** | David Mendes da Costa, Principal Policy Manager, Citizens Advice ( <a href="#">QQ 30–38</a> )                | <a href="#">UKR0063</a> |
|    | Neil Dawson  | <a href="#">UKR0091</a> |
| *  | Gareth Davies, Comptroller and Auditor-General, National Audit Office ( <a href="#">QQ 1–12</a> )            |                         |
|    | The Department for Business and Trade  | <a href="#">UKR0089</a> |
|    | The Department for Education   | <a href="#">UKR0090</a> |
|    | Professor Robin Ellison  | <a href="#">UKR0005</a> |
|    | The Energy Networks Association  | <a href="#">UKR0060</a> |
|    | Energy UK  | <a href="#">UKR0061</a> |
|    | The Environment Agency   | <a href="#">UKR0025</a> |
|    | The Financial Conduct Authority (FCA)  | <a href="#">UKR0039</a> |
|    | Financial Inclusion Centre   | <a href="#">UKR0087</a> |
|    | The Food Standards Agency  | <a href="#">UKR0085</a> |
|    | Form Ventures  | <a href="#">UKR0042</a> |
| ** | Michael Gibbons CBE, Senior Non-Executive Director, Bluefield Solar Income Fund ( <a href="#">QQ 21–29</a> ) | <a href="#">UKR0008</a> |
|    | The Global Infrastructure Investor Association (GIIA)  | <a href="#">UKR0050</a> |
|    | GuildHE  | <a href="#">UKR0035</a> |
|    | Professor Robert Hazell, The Constitution Unit, University College London                                    | <a href="#">UKR0072</a> |
|    | The Health and Care Professions Council (HCPC)   | <a href="#">UKR0023</a> |
|    | The Health and Safety Executive  | <a href="#">UKR0082</a> |
| ** | James Heath, Chief Executive, National Infrastructure Commission ( <a href="#">QQ 86–106</a> )               | <a href="#">UKR0095</a> |
| *  | Dame Meg Hillier MP, Chair, Public Accounts Committee ( <a href="#">QQ 49–58</a> )                           |                         |
|    | Hitachi Energy   | <a href="#">UKR0037</a> |
| ** | Dame Patricia Hodgson, Deputy Chair, Policy Exchange, and former Chair, Ofcom ( <a href="#">QQ 59–69</a> )   | <a href="#">UKR0071</a> |
|    | Hoxton Farms   | <a href="#">UKR0016</a> |
|    | Stuart Hudson, Partner, Brunswick  | <a href="#">UKR0003</a> |
|    | The Independent Networks Association (INA)   | <a href="#">UKR0027</a> |
|    | The Information Commissioner’s Office  | <a href="#">UKR0058</a> |
|    | The Institute for Government   | <a href="#">UKR0006</a> |
|    | The Institute of Customer Service  | <a href="#">UKR0059</a> |

|   |                         |
|---|-------------------------|
| The Institute of Regulation   | <a href="#">UKR0028</a> |
| The Investment & Saving Alliance (TISA)   | <a href="#">UKR0012</a> |
| Dr Con Keating, Head of Research, Brighton Rock Group   | <a href="#">UKR0051</a> |
| Dr Andreas Kokkinis, Associate Professor in Law,<br>University of Birmingham  | <a href="#">UKR0053</a> |
| The London Market Group   | <a href="#">UKR0043</a> |
| John Lowrie   | <a href="#">UKR0001</a> |
| Dr Angus M. Marshall, Lecturer in Computer Science at<br>the University of York   | <a href="#">UKR0024</a> |
| Ian McLintock   | <a href="#">UKR0040</a> |
| Microsoft Ltd   | <a href="#">UKR0074</a> |
| myenergi  | <a href="#">UKR0045</a> |
| National Grid   | <a href="#">UKR0084</a> |
| Ofcom   | <a href="#">UKR0081</a> |
| Ofqual  | <a href="#">UKR0062</a> |
| Ofgem   | <a href="#">UKR0094</a> |
| Ofsted  | <a href="#">UKR0038</a> |
| Kevin Parry, Chair, Nationwide Building Society<br>[evidence submitted in a personal capacity]  | <a href="#">UKR0018</a> |
| The Payment Systems Regulator (PSR)   | <a href="#">UKR0055</a> |
| * John Penrose MP ( <a href="#">QQ 39–48</a> )  |                         |
| Dr John Picton, Reader in Law, University of Manchester   | <a href="#">UKR0013</a> |
| Phoenix Group   | <a href="#">UKR0069</a> |
| * Filippo Pollara, Senior Policy Adviser, Federation of Small<br>Businesses ( <a href="#">QQ 21–29</a> )                                      |                         |
| The Professional Standards Authority  | <a href="#">UKR0066</a> |
| Prospect  | <a href="#">UKR0029</a> |
| ** Charles Randell, Senior Consultant at Slaughter and May<br>and former Chair, Financial Conduct Authority ( <a href="#">QQ 13–<br/>20</a> ) | <a href="#">UKR0002</a> |
| Regulatory Reform Group   | <a href="#">UKR0078</a> |
| Nicola Smith, Head of Rights, Social and Economics<br>Department, Trades Union Congress ( <a href="#">QQ 30–38</a> )                          | <a href="#">UKR0047</a> |
| Peter Sommer, Visiting Professor, Birmingham City<br>University   | <a href="#">UKR0004</a> |
| South West Water  | <a href="#">UKR0068</a> |
| * Richard Sullivan-Jones, Senior Audit Manager, National<br>Audit Office( <a href="#">QQ 1–12</a> )   |                         |
| Surfers Against Sewage  | <a href="#">UKR0033</a> |

|  |                                |
|--|--------------------------------|
| Sustainability First   | <a href="#"><u>UKR0032</u></a> |
| techUK   | <a href="#"><u>UKR0077</u></a> |
| Trades Union Congress  | <a href="#"><u>UKR0047</u></a> |
| The Transparency Task Force  | <a href="#"><u>UKR0056</u></a> |
| * Lord Tyrie, former Chair, House of Commons Treasury Committee, and former Chair, Competition and Markets Authority ( <a href="#"><u>QQ 13-20</u></a> ) | <a href="#"><u>UKR0078</u></a> |
| Unite the Union  | <a href="#"><u>UKR0088</u></a> |
| UK Finance   | <a href="#"><u>UKR0075</u></a> |
| Unchecked UK   | <a href="#"><u>UKR0011</u></a> |
| Universities UK  | <a href="#"><u>UKR0054</u></a> |
| Visa Europe Limited  | <a href="#"><u>UKR0041</u></a> |
| Water UK   | <a href="#"><u>UKR0092</u></a> |
| Wildlife and Countryside Link  | <a href="#"><u>UKR0036</u></a> |
| Worshipful Company of Water Conservators   | <a href="#"><u>UKR0007</u></a> |

## APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords Industry and Regulators Committee, chaired by Lord Hollick, has launched an inquiry into UK regulators, with a specific focus on independence and accountability.

### Background

According to the Department for Business and Trade, there are 90 regulators across the UK, not including local authorities. They cover a wide range of areas and have a range of different powers and responsibilities; in some cases they have been given a specific job to do by Parliament. Many regulators, though not all of them, are public bodies, funded by the taxpayer.

To date, the Industry and Regulators Committee has conducted scrutiny of a number of regulators, including Ofwat, Ofgem, and the Office for Students. The Committee is now launching a cross-cutting and thematic inquiry into UK regulators, drawing in part on the findings of its previous inquiries. The inquiry will focus in particular on the relationship between regulators and the Government, and on how regulators are held accountable, including by Parliament.

### Contributing evidence

The Committee encourages anyone with expertise in or experience of the matters under consideration in its inquiry to submit written evidence.

Diversity comes in many forms, and hearing a range of different perspectives means that committees are better informed and can more effectively scrutinise public policy and legislation. Committees can undertake their role most effectively when they hear from a wide range of individuals, sectors or groups in society affected by a particular policy or piece of legislation. We encourage anyone with experience or expertise of an issue under investigation by a Select Committee to share their views with the Committee, with the full knowledge that their views have value and are welcome.

If you wish to contribute your experience and expertise to this inquiry, please respond to the questions below. There is no obligation to answer every question.

### Questions

The Committee is interested in answers to the following questions:

- (1) Are UK regulators being given a clear job to do? Are the roles and remits of different regulators sufficiently discrete, or is there overlap and duplication?
- (2) How effectively do regulators co-operate with one another, and how could this be improved?
- (3) Is the right balance being struck between the responsibilities of regulators and those of the Government, particularly where there are political or distributional trade-offs that need to be resolved?
- (4) Does the Government provide sufficient guidance to regulators in making decisions, particularly in deciding between different objectives and priorities?

- (5) Are regulators sufficiently independent of government? Is the right balance being struck between strategic and political input from government and preserving the operational independence of the regulators?
- (6) Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?
- (7) How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? How transparent are regulators about their own performance?
- (8) What mechanisms could be used to hold regulators accountable on a regular and ongoing basis? What metrics can be used to judge whether a regulator is performing well?
- (9) Do any of the UK's international comparators address the above questions particularly well? What lessons, if any, can the UK learn from other jurisdictions on these matters?

For this inquiry, the Committee is focussing specifically on regulators which a) have a statutory role established by Parliament and b) are organised as public bodies. Prospective witnesses are asked to bear these parameters in mind when submitting evidence.