

Consumer Scotland response to - Smarter regulation and the regulatory landscape: call for evidence

1. Introduction

Who we are

- 1.1 Consumer Scotland is pleased to provide a response to this call for evidence on smarter regulation and the regulatory landscape.
- 1.2 Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. The Act defines consumers as individuals and small businesses that purchase, use, or receive products or services. The Act also sets out the core functions of Consumer Scotland and we use these statutory functions to improve outcomes for current and future consumers:
 - Advocacy and advice
 - Representation
 - Research and investigation
 - Information
 - Recall of goods
 - The consumer duty
- 1.3 Our purpose is to improve outcomes for current and future consumers and our strategic objectives are:
 - to enhance understanding and awareness of consumer issues by strengthening the evidence base
 - to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
 - to enable the active participation of consumers in a fairer economy by improving access to information and support
- 1.4 Addressing the challenges faced by consumers in relation to the cost of living and climate change, and considering the needs of those in vulnerable circumstances, are themes that run throughout our work.

- 1.5 We work closely with organisations with expertise and interest in consumer issues, including regulators, government, businesses, enforcement bodies, consumer groups and the third sector.
- 1.6 We also receive funding for specific advocacy activities in the electricity, gas, post and water sectors from the levies that ultimately derive from consumers' bills. We therefore have a specific interest in how the regulatory landscape in these sectors operate and the impact it has on Scotland's consumers.

Approach to responding to this call for evidence

- 1.7 Through our statutory role as the independent advocacy body for consumers in Scotland we interact with a broad range of UK/GB regulators some of the most prominent that are relevant to this call for evidence include:
 - Office of Gas and Electricity Markets (Ofgem)
 - Office of Communications (Ofcom)
 - Competition and Markets Authority (CMA)
 - Information Commissioner's Office (ICO)
 - Advertising Standards Authority (ASA)
- 1.8 We also work closely with a number of regulators that do not meet the scope of this call for evidence. This includes, for example, regulators in devolved policy areas such as the Water Industry Commission for Scotland, Scottish Environmental Protection Agency, the Drinking Water Quality Regulator for Scotland, Food Standards Scotland and the Scottish Legal Complaints Commission.
- 1.9 This response to the call for evidence focuses on Consumer Scotland's experiences of working with regulatory bodies and four specific topic areas that are most relevant to our work as the consumer advocacy body for Scotland:
 - How do regulators engage with issues in Scotland?
 - How do regulators address consumer specific concerns?
 - How do regulators work with consumer bodies?
 - Do regulators have a net zero mandate?

1.10 We hope the answers to these questions in section 2 are helpful in meeting the objectives of this call for evidence, particularly *“what works well and what could be improved in how regulators operate to deliver for the sectors they serve¹.”*

¹ <https://www.gov.uk/government/calls-for-evidence/smarter-regulation-and-the-regulatory-landscape>

2. Consumer Scotland call for evidence response

How do regulators engage with Scotland?

- 2.1 The first topic area we have provided a response on is the extent to which regulators engage with Scotland and Scotland specific issues.
- 2.2 The call for evidence states *“for the purpose of this call for evidence, we welcome hearing about any central government public bodies with a regulatory function and a territorial scope of the whole UK, Great Britain or England and Wales only.”* As the statutory and independent body for consumers in Scotland, Consumer Scotland has an interest in how regulators engage with Scotland and Scotland’s consumers specifically.
- 2.3 There are a number of reasons why such engagement may be important. A market may operate differently in Scotland to other parts of the UK or GB, for example if there are different number of suppliers of a service, which can impact on consumer choice. There may also be geographical or demographic variations in Scotland, for example due to climate, topography and population density, which may impact on how a market functions. Finally, there may be areas where regulation intersects with specific devolved policy issues.
- 2.4 We have seen some evidence of regulators demonstrating excellent practice in their engagement with the specific context for consumers in Scotland, but improvements can be made in some areas.
- 2.5 Good practice by regulators in this area includes examples such as establishing a dedicated governance body to advise on Scottish issues, and/or appointing Board members who to specifically represent Scotland and to advise on matters relating to people living in Scotland. Other approaches include a dedicated ‘Scotland nations team’ that is well engaged on policy issues and has a good working relationship with stakeholders across the landscape in Scotland.
- 2.6 There has been a very positive trend in recent years of a number of regulators increasing their footprint in Scotland, and significantly increasing the number of Scotland-based staff members. Consumer Scotland is supportive of regulators deploying resources within Scotland, both to undertake Scottish-specific engagement and to deliver UK or GB-wide work from a Scottish base. Situating senior decision-makers with a UK or GB wide remit within Scotland can be a particularly helpful approach. Such a model provides important opportunities for regulators to gather

intelligence on matters affecting Scotland disproportionately, supporting better outcomes for consumers in Scotland.

- 2.7 A further step in enhancing this approach could be for regulators to undertake more specific Scotland-focused work, recognising the different context that can exist for consumers in Scotland, as described above.
- 2.8 The number of people affected by an issue can be a key factor in deciding what work regulators prioritise. This approach can reduce the likelihood of Scottish specific investigations being undertaken. However, the impact of this can be mitigated by including clear explanations of devolution related differences in UK wide studies, as in the recent Competition and Markets Authority publication on their rented housing sector consumer research project². This will make findings more relevant to people who live in Scotland and increase the impact of work undertaken.
- 2.9 We would also welcome moves to increase the disaggregation of Scottish specific data from UK wide data in publications. This is important to ensure that regulators can deliver appropriate oversight for all consumers across the UK/GB.
- 2.10 We would like to see collaborative efforts through the UK Regulators Network (UKRN) for example, which has a good footprint in London, extended more to the devolved nations. We were pleased to work in partnership with UKRN to hold a joint event for Scottish stakeholders on the cost of living in November 2023.
- 2.11 Finally, we would highlight the very positive working relationships we have observed being developed in the devolved water regulatory landscape. The regulators involved in this sector work closely together and with Scottish Water and consumer bodies. We would point to this working arrangement as a positive example of a partnership approach to working that makes use of expertise in the local landscape to achieve better outcomes for consumers in Scotland.

How do regulators address consumer specific concerns?

- 2.12 The second area of interest we have provided a response on is how do regulators address consumer specific concerns? Factors considered in drawing together our views include the level of consumer engagement and examples of senior management buy-in, such as consumer champions sitting on regulator boards.
- 2.13 Our overall experience of UK/GB regulators in this area is that regulators generally do have a strong consumer focus and that this is an area of improvement when considered against arrangements from prior years. Improvements have been made in the range and quality of engagement with consumers and consumer bodies. In these cases, this has resulted in a much more consultative approach from regulators which can help to achieve better outcomes for consumers.

² <https://www.gov.uk/cma-cases/rented-housing-sector-consumer-research-project>

- 2.14 Ofgem for example has a strong consumer focus. One of their three strategic priorities is “Shaping a retail market that works for consumers³.” Putting consumer issues at the heart of strategic priorities like this can result in improved outcomes for consumers.
- 2.15 In our experience Ofgem take a consultative approach to their work and engage well with consumers. They engage early with consumer groups and charities on consumer related subject areas and are proactive in seeking out feedback for consultations. They also have a number of consumer focussed standing working groups.
- 2.16 Other examples of strong consumer engagement include examples of committees established to inform the work of the executive board. The Communications Consumer Panel at Ofcom⁴, is an example of this. The panel promotes consumers’ interests and as an independent body can publish its own reports and research and has its own staff resources.
- 2.17 Prioritising consumer concerns and making them part of a regulator’s strategic objectives can be a powerful method to achieve better outcomes for consumers. The aim of regulation should be to ensure markets work for those making purchases, or that good quality services are delivered to those requiring them.
- 2.18 A successful market is one that consumers feel works in their interest and in which they are happy to make purchases or use services. A regulatory system therefore has to work for all groups of consumers and good regulation should be based on a genuine understanding of consumers’ experiences and behaviours. Regulators would be better able to ensure markets work, or good quality services are provided, if regulators and consumers’ objectives align.
- 2.19 A step beyond ensuring regulation is based on understanding of consumers is for regulators to ensure that consumers have a voice at the table when decisions are made, enabling them to become active shapers of markets and services. There are good examples of how this can work.
- 2.20 The Water Industry Commission for Scotland for example, – working with consumer groups and Scottish Water – created the Customer Forum to negotiate with Scottish Water during its Strategic Review. Crucially, it made clear it would be minded to agree Scottish Water’s business plan if it had first been agreed by the Forum, effectively empowering consumers. That had significant success, resulting in a 25 year Strategic Plan that was demonstrably aligned with consumer aspirations.
- 2.21 We have observed examples of where a regulator’s duties cover a range of sectors or markets, with some variation in the regulatory approach or priorities applied across these sectors. This is particularly the case where a regulator’s remit may have grown over time. There may often be good reason for a different regulatory approach to different sectors covered by the same regulator. However, we observe that there may also be further opportunities to share learning and best practice within regulators, and for regulators to take a stronger ‘consumer first’ approach which considers the holistic

³ <https://www.ofgem.gov.uk/our-strategy-and-priorities>

⁴ <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/committees/communications-consumer-panel>

impact for consumers of a series of different regulatory interventions, across the range of market areas covered by the regulator.

- 2.22 Extending this point further, we have identified that there are significant opportunities for further joint working between different regulators to consider the overall consumer experience of regulation – particularly where there are clear intersections between the markets covered by different regulators. An area where a more joined-up approach to economic regulation across markets could potentially bring benefit for consumers at present is the issue of affordability.
- 2.23 Affordability of goods and services is a major concern for consumers. Figures from the Office for National Statistics⁵ for example suggest that real household disposable income per person fell by 1.9 per cent in 2022-23, constituting the largest single-year fall on ONS records.
- 2.24 Regulatory opportunities in this area could include regulators proactively intervening to prevent or limit price rises across their respective markets; to clearly set out standards for how providers should identify and support consumers in vulnerable circumstances; and potentially helping increase the uptake of more affordable tariffs . A number of regulators have active plans of work in this area and there are opportunities for sharing best practice, collaborating and determining what works, for example through forums such as the Consumer Network for Scotland, the Consumer Protection Partnership or the UK Regulators Network.
- 2.25 The cost of living crisis also illustrates the balance that regulators must strike between the evidence threshold and taking preventative action to intervene in markets to protect consumers from harm. With a growing number of consumers experiencing financial vulnerability, we would encourage regulators to take a dynamic and proactive approach to market monitoring to ensure timely interventions are undertaken to provide sufficient protection to consumers.

How do regulators work with consumer bodies?

- 2.26 The third area we have provided a response on relates to how regulators work with consumer bodies.
- 2.27 Under Consumer Scotland’s partnership approach we collaborate with a range of other organisations with interests and expertise in consumer issues. As part of this partnership work we convene the Consumer Network for Scotland. The network, which has members operating at both UK and Scottish levels, provides a forum for consumer related topics to be aired at a strategic Scotland wide level.
- 2.28 While the nature of individual organisations’ mandates might influence the extent of consumer engagement, Consumer Scotland believes that working in partnership enables

⁵ [https://obr.uk/box/why-has-real-household-disposable-income-been-stronger-than-forecast/#:~:text=ONS%20outturn%20estimates%20from%20June,with%20the%20March%202022%20forecast\).](https://obr.uk/box/why-has-real-household-disposable-income-been-stronger-than-forecast/#:~:text=ONS%20outturn%20estimates%20from%20June,with%20the%20March%202022%20forecast).)

the sharing of insights and expertise and will ultimately deliver the best outcomes for consumers.

- 2.29 It is our experience that regulators do engage openly with us and other consumer organisations. And that regulators facilitate connections between Consumer Scotland and other UK Government stakeholders.
- 2.30 Regulators often have standing consumer interest related working groups or panels and these can be good examples of how they consider consumer groups' point of view.
- 2.31 In our experience, regulators engage early on in the policy development process with consumer bodies and actively seek out the consumer's point of view from these organisations. This engagement can take the form of workshops or interest group meetings where experiences and points of view can be shared between stakeholders.
- 2.32 Consumer bodies' points of view are often sought out in consultations and they are encouraged to engage and offer challenge on these topics. Consumer bodies' responses to these exercises should be given sufficient weight when evaluating responses, recognising the consumer interest as an equal party to industry. Consideration should also be given as to how results of consultations are communicated to stakeholders and to ensuring that consumer bodies are identified as priority stakeholders in this process.
- 2.33 Although the frequency of engagement with regulators has been positive, and engagement is done on a good faith basis, some improvement could be made in the approach to engagement with consumer bodies.
- 2.34 Regulators should take a strategic approach to engagement. The number of engagement activities with consumer bodies, who may have less resources available to them than other interested parties, such as regulated businesses, should be considered and where possible rationalised to ensure a similar level of output from a more targeted approach.
- 2.35 While appreciating that regulators have themselves had to respond to fast moving market pressures, it would be helpful if regulators could plan engagement activities in advance where possible and provide sufficient notice of where input is required. This will help the consumer bodies to provide considered and helpful responses to consultation exercises.
- 2.36 Consideration should be given to the type of engagement required from consumer bodies, the level within the organisation that needs to be engaged, and the resource implications. Formal written consultations for example can be a more onerous request for engagement than other types, such as meetings .

Do regulators have a net zero mandate?

- 2.37 The final area of interest we have provided a response to is whether regulators have a net zero mandate.

- 2.38 Climate change adaptation and mitigation is one of three cross-cutting themes that run through Consumer Scotland's 2023-24 work plan and our 2023-27 strategic plan
- 2.39 Scotland has an ambitious net zero target and consumers' choices will be key to achieving it. Our intention is to understand and track consumers' priorities for, and experience of, the transition to net zero. We want to understand how the transition can be made easier for consumers on lower incomes, or who face other disadvantages, to make sure they are not excluded.
- 2.40 Consumers are being asked to significantly alter their behaviour in order to achieve Scotland's, and the UK's net zero targets. Regulators therefore have an important role to play in helping achieve this goal. Regulators' priorities have the potential to significantly impact on the priorities and actions of organisations and consumers within the sectors they regulate. Regulators having a net zero mandate therefore could have a significant impact on achieving net zero within and across key economic sectors.
- 2.41 Ofgem is one example of a regulator with a specific statutory net zero duty following Royal Assent of the Energy Act 2023. The duty adds a specific mandate to achieve its principal objective to protect the interests of existing and future consumers by supporting the UK Government meet its legal obligation to get to net zero by 2050. The duty requires Ofgem to consider how its decisions may assist the Secretary of State in meeting the government's net zero target .
- 2.42 Unfortunately however, most of the regulators that Consumer Scotland engages with do not currently have net zero mandates. Consideration should be given to how these arrangements may be updated in future, to give all UK regulators should have clear net zero mandates to help influence regulated organisations to prioritise moving to net zero.