



University of
Leicester



Research report for Citizens Advice

Tackling consumer vulnerability: regulators' powers, actions and strategies

Centre for Consumers and Essential Services
University of Leicester
July 2014

Contents

Executive summary	5
1. Background and Introduction	8
2. Overview of what's been happening	15
3. Ofgem.....	18
4. Ofwat.....	38
5. Ofcom.....	52
6. Financial Conduct Authority (FCA).....	67
7. Conclusions and recommendations.....	85

This independent report was written by Mike George, Cosmo Graham, Linda Lennard and Kate Scribbins. We would like to thank the four regulators who we examined, the Financial Conduct Authority, Ofcom, Ofgem and Ofwat, for their willingness to cooperate in this research. In particular, we would like to thank the various individuals who took time out of their busy schedules to be interviewed by us. Any errors and omissions are our responsibility.

Executive summary

Communications, energy, water and financial services are part of the bedrock of our lives. Everyone needs affordable access to energy and water – they are essential for life, health, safety and well-being. Being able to communicate via a telephone and increasingly through online methods has become essential for everyday life, and for wider social and economic participation. Similarly financial services, such as bank accounts and affordable credit, are vital in their own right and as a crucial gateway to other services. It is also in the wider interests of society that everyone has easy and affordable access to these services.

'Vulnerable consumers' do not form a static separate group in the population.

The effects of not having affordable access, or of other problems, with these essential services are likely to be especially serious for people in vulnerable circumstances. As previous research by Centre for Consumers and Essential Services (CCES) and Consumer Futures has shown, there is a wide range of risk factors involved in contributing to consumer vulnerability in these services, and often there are multiple causes. 'Vulnerable consumers' do not form a static separate group in the population. In reality consumer vulnerability can be a transient state that affects people at different periods of time, or it can be long-term in effect. It may be triggered by events such as loss of a job, the onset of disability, or becoming a carer.

The need to have a better understanding of the wide range of factors that contribute to consumer vulnerability has gained increasing acceptance in recent years.¹

But consumers' individual circumstances are not the only factors. Companies' policies and behaviour can be equally important in contributing to consumers being at greater risk of vulnerability.

The need to tackle consumer vulnerability in essential services has become ever more pressing as a result of the current economic situation. Pressures on living costs mean that many households are struggling to cope with bills across energy, water, communication and financial services, alongside housing and food costs and other essential goods and services. The issue of affordability has rightly become very high profile with increasing external pressures on the regulators. In addition far-reaching changes have taken place in recent years affecting how these services are provided. Energy for example has been one of the most complicated markets

Companies' policies and behaviour can be equally important in contributing to consumers being at greater risk of vulnerability.

¹ See for example BSI Standard BS 18477:2010 *Inclusive service provision. Requirements for identifying and responding to consumer vulnerability*; and *Better Choices: Better Deals Consumers Powering Growth*, BIS and Cabinet Office, 2011.

for consumers. The communications sector has also changed radically and consumers now have to find their way through often intricate packages of different services. Financial services products are frequently very complex.

It is clear that approaches to regulation which relied upon encouraging competition in the markets (energy and telecommunications) or simply relying on competition and financial education (financial services) do not provide a solution to all the problems faced by consumers in vulnerable circumstances.

Regulators have needed to develop new approaches and policies and the aim of this work has been to consider specifically how four regulators of essential services (Ofgem, Ofcom, Ofwat and the Financial Conduct Authority) are addressing consumer vulnerability.

The regulators are now recognising the importance of having a better understanding of the issues and factors contributing to consumer vulnerability, although their approaches vary. From this research there appears to be significant support for these approaches from the top of the organisations.

Although this is a positive development, the key question is how this will be put into practice across all the operations of the regulators and not simply be confined to specialist sections. They must make sure they have adequate internal processes in place to monitor that the approach is really being taken on board across their organisations, including regulation, enforcement and economic issues such as cost reflectivity etc.

The findings demonstrate that there is a great deal of scope for experience and lessons to be shared across regulators in relation to tackling consumer vulnerability. Many issues, for example, around payment for essential services and handling of debt, increasingly cut across different regulated industries and a joined-up approach by the regulators is important. It would be highly beneficial for there to be regular meetings to share learning and to discuss problems in order to develop best practice and effective policies.

The recent launch of the UK Regulators' Network (UKRN) offers a highly relevant means for collaboration on issues relating to consumer vulnerability.² We welcome the announcement that one of the first areas of work for the UKRN is a comparative study of regulators' approaches to affordability. This could be usefully widened to look at how consumer vulnerability can be tackled across these sectors.

It is clear that approaches to regulation which relied upon encouraging competition in the markets... or simply relying on competition and financial education... do not provide a solution to all the problems faced by consumers in vulnerable circumstances.

It is vital that the regulators set a series of outputs and outcomes to help evaluate the effectiveness of their work to tackle consumer vulnerability and regularly report on progress.

² See <http://bit.ly/YhhawN>

It is vital that the regulators set a series of outputs and outcomes to help evaluate the effectiveness of their work to tackle consumer vulnerability and regularly report on progress.

But also they must put in place an effective means of ‘external auditing’ that involves a range of relevant organisations which work with consumers in vulnerable circumstances. This could be done through the use of existing structures (such as the Financial Services Consumer Panel and Ofcom’s Communications Consumer Panel and Advisory Committee on Older and Disabled People) or by setting up external ‘challenge groups’ for each regulator or jointly. This should be underpinned by a clear mechanism so that external input is taken on board and seen to be so. This should not be a one-off exercise but one that becomes an integral part of the regulators’ consumer vulnerability policies and monitoring.

Ultimately the success of the efforts of the regulators in tackling consumer vulnerability revolves very much around the responsiveness of the companies. This means recognising that company behaviour and policies can greatly add to the risk of consumer vulnerability, and taking practical steps to eliminate poor practices and learn from good practice. The regulators all have different approaches to this issue, reflecting their various legislative remits, differing market contexts and differing approaches and it will be crucial to assess the effectiveness of the different approaches.

While the regulators have a central role to play, their remits are limited so government too has a critical role in tackling the causes and consequences of consumer vulnerability in these essential services. It is clear that there is often a gap between the expectations of consumers and the public about what regulators can do and their actual statutory powers. As a matter of urgency government needs to recognise its role in tackling consumer vulnerability in these essential services and identify what remedies should come from public policy. Moreover, given their developing understanding of the factors that cause consumer vulnerability, it is important that the regulators share their knowledge and experiences, in particular, to inform wider public policy-making at UK and EU levels

Ultimately the success of the efforts of the regulators in tackling consumer vulnerability revolves very much around the responsiveness of the companies.

... government too has a critical role in tackling the causes and consequences of consumer vulnerability in these essential services.

1. Background and Introduction

Communications, energy, water and financial services are part of the bedrock of our lives. Everyone needs affordable access to energy and water – they are essential for life, health, safety and well-being. For example, being able to communicate via a telephone and now electronically have become essential for everyday life, and for social and economic participation. Similarly financial services, such as bank accounts and affordable credit, are vital in their own right and as a crucial gateway to other services. It is also in the wider interests of society that everyone has easy and affordable access to these services.

Consumers in vulnerable circumstances are likely to be especially at risk if they face problems with affordable access to such essential services, with potentially serious effects for their health and quality of life and that of their children. But consumers' individual circumstances are not the only factors to take into account. The ways in which these markets operate and the policies and practices of the companies involved heavily influence whether consumers are vulnerable in the provision of these essential services.

As part of its brief to promote positive outcomes for consumers, Consumer Futures (previously Consumer Focus and now part of Citizen's Advice)³ is particularly concerned about consumer vulnerability and about the effectiveness of the regulation of essential services. In 2008 Consumer Focus assessed the performance of six regulators in its report, *Rating the Regulators*. Although the report discussed the approach of regulators to consumers in vulnerable situations, that was not its main objective. Since then Consumer Futures has published a number of reports relating to consumers in vulnerable situations including *Tackling Consumer Vulnerability – An action plan for empowerment* (2012) and *Addressing the Poverty Premium* (2013).

Following this work, Consumer Futures commissioned CCES to consider specifically how four regulators of essential services are addressing consumer vulnerability, namely, Ofcom, Ofgem, Ofwat and the Financial Conduct Authority (FCA). CCES has carried out extensive work on consumer vulnerability, notably on the importance of understanding the wide variety of contributory risk factors including company policies and behaviour as well as consumers' circumstances.

the policies and practices of the companies involved heavily influence whether consumers are vulnerable in the provision of these essential services.

Consumer Futures commissioned CCES to consider specifically how four regulators of essential services are addressing consumer vulnerability, namely, Ofcom, Ofgem, Ofwat and the Financial Conduct Authority (FCA)

³ On 1 April 2014, the functions of Consumer Futures were transferred to Citizens Advice.

The challenging context

The need to tackle consumer vulnerability in these essential services has become ever more urgent because of the current economic situation. Pressures on living costs mean that many households are struggling to cope with bills across energy, water and communication and financial services, alongside housing and food costs and other essential goods and services. The issue of affordability has rightly become very high profile with increasing external pressures on the regulators and the companies.

The difficulties that many consumers face have also been compounded by the far-reaching changes that have taken place in how these services are provided. Energy, for example, had become one of the most complicated markets for consumers, as a result of which Ofgem has introduced a range of retail market reforms with the partial aim of simplifying the market. Radical technological changes have taken place in the communications sector and consumers now have to find their way through often complex packages of different services. Financial services products are also frequently very complex.

The regulators are working to try to address problems such as tariff complexity, unclear bills, and mis-selling. And there are welcome instances of good practice as some companies are taking on board the need to meet consumers' requirements better. But consumer trust in many of the companies that provide these services is at a low ebb for a variety of reasons, frequently because of the costs but also as a result of mis-selling scandals,⁴ poor complaint handling and unexpectedly high bills. The recent example of some energy companies holding on to consumers' credit balances after account closure is just another example of practices that add to consumers' difficulties and mistrust. While anyone can be affected by company and market failures, the impact for consumers in vulnerable circumstances is likely to be more serious.

The reality of vulnerability

As previous research by CCES and Consumer Futures has shown, there is a wide range of risk factors involved that contribute to consumer vulnerability in these services, and often there are multiple causes. Society is not divided between 'vulnerable consumers' and the rest. In reality consumer vulnerability can be a fluid state that affects people at different times in their lives or it can be long-term in effect. It may be triggered by events such as loss of a job, the onset of disability, or becoming a carer for example. The existence of vulnerability can be hidden or overlooked, for example, because people feel embarrassed about revealing low income and other issues such as disability, literacy or numeracy difficulties, mental health problems or learning disabilities.

... a good understanding of the risk factors that contribute to consumer vulnerability is vital in order to address the problems

⁴ Most recently in relation to E.ON: <http://bit.ly/1u6fnWU>

Having a good understanding of the risk factors that contribute to consumer vulnerability is vital in order to address the problems and barriers that many consumers face in relation to these essential services, and this approach has gained increasing acceptance in recent years.⁵

But it is not only a matter of gaining a better understanding of consumers' circumstances. The policies and practices of the companies involved are equally important. Providers' actions, or failures to act, can place consumers at greater risk.

As outlined above, affordability is inevitably a critical issue but consumers can face many other barriers. These include unclear bills, complex and confusing deals and contract terms, poorly run costly phone systems, lack of appropriate products, and failing to deal with complaints properly.

Given the low levels of consumer trust in some of these sectors, it is also in the companies' own interests to eliminate such barriers and ensure that their policies and systems are fully inclusive, not least for reputational reasons.⁶

... is also in the companies' own interests to eliminate such barriers and ensure that their policies and systems are fully inclusive...

The role of regulation

Communications, energy and water services were formerly run as network monopoly services and therefore independent regulators were established when the services were privatised to ensure that the markets worked properly (water is still a domestic retail monopoly service). Over the years regulation has also been introduced for financial services.

The independent regulators covered in this report – Ofgem, Ofwat, the FCA and Ofcom – have their origins in legislation that dates from the mid to late 1980s. Their legal frameworks have been substantially amended since then by UK governments and, in some cases, as a result of EU Directives. Originally the energy, telecommunications and water regulators had powers to regulate prices and later became responsible for promoting the development of competition, as governments expected that this would largely solve the problems facing consumers in these sectors, for example by driving prices down and quality up. Regulation of retail prices in energy and telecommunications was therefore brought to an end.

Further changes in the regulators' objectives were made by governments from around 2000, with more emphasis placed on consumers' interests and social and environmental matters, and, for Ofcom, on citizens' interests.

⁵ See for example BSI Standard BS 18477:2010 *Inclusive service provision. Requirements for identifying and responding to consumer vulnerability*; and *Better Choices: Better Deals Consumers Powering Growth*, BIS and Cabinet Office, 2011.

⁶ For example, Economic Insight *The Business Case for Good Complaints Handling in Legal Services* (2014) available at: <http://bit.ly/1uCXtjo>

However, much of the focus from government and regulators has continued to be based on promoting competition but this in itself has proved highly problematic and consumers still face significant difficulties in these services. Similarly, in financial services, simply relying on competition and promoting financial literacy has not provided a solution to the problems confronting consumers.

In turn, this has raised a number of questions for regulators about the best use of the regulatory tools at their disposal. The issue of which regulatory tools to use and the balance between them is a long standing issue within the theory and practice of regulation but continues to be a matter of debate. To what extent should regulators depend on market mechanisms and incentives? How should these be designed? At what point should there be formal intervention? What types of powers, sector specific or competition law powers, should be used? How should remedies be designed to accomplish the ends envisaged?

There are no easy answers to these questions and regulatory interventions inevitably vary from sector to sector, given the widely differing contexts. What might be appropriate in the water sector, with thirty-one regulated companies and regional monopolies would not necessarily translate to financial services with 26,000 retail and wholesale firms working competitive markets.

These developments also need to be seen against the major changes taking place in these industries and the effects of the financial crisis. The challenge for the regulators and government, as well as the companies involved, is to ensure that these services work well for all consumers, especially those in vulnerable circumstances.

Aims

The aim of this action research was to explore the regulators' approaches to consumer vulnerability and how these have developed given the different contexts in which they operate, what they are seeking to do and the issues they face, with the aim of learning from their different experiences. The intention was not to seek to rate their performance. Instead the objective was to see what lessons can be shared and policies developed. It is welcome that the regulators agreed to be involved in the research as they considered that it would be of practical value. We hope that this report will contribute to enabling further collaborative work across the regulators on this important issue.

The challenge for the regulators and government, as well as the companies involved, is to ensure that these services work well for all consumers, especially those in vulnerable circumstances.

Key findings

The regulators

The effects for consumers in vulnerable circumstances of difficulties with these essential services can be severe. Consequently how the regulators tackle consumer vulnerability is of utmost importance. The regulators' ability to do so is shaped not only by their statutory powers and duties but also by their willingness to use these powers and to monitor the outcomes for consumers.

The statutory frameworks for three of the regulators – Ofcom, Ofgem, and Ofwat – list certain 'categories' of consumers for whom they have to have regard, for example, older people and people with disabilities, with the underlying implication that these are vulnerable 'groups'. Our research shows that these regulators, together with the FCA, are moving away from categorising consumers in this way towards a more rounded understanding of consumer vulnerability.

This has happened for a variety of reasons. Regulation of the communications, energy, financial services and water sectors has had to change over the years because of the problems with affordability that affect many consumers, the complexity of the way these markets operate, and growing political and public pressures on the regulators to intervene on behalf of consumers. Reliance on competition and on 'active consumers' engaging in these markets has not proved to be a solution.

While the regulators have carried out work over the years on issues that affect consumers in vulnerable circumstances, until recently this has been fairly limited and ad hoc but they are now seeking to develop more strategic approaches to consumer vulnerability. Given the different contexts within which they operate, this is happening in different ways and at different stages across the regulators. The first manifestation of a more rounded approach has been Ofgem's adoption of a detailed consumer vulnerability strategy and accompanying work programme. Ofcom has recently published its approach to participation and consumer vulnerability with a dedicated section of its website.

Ofwat and the FCA, by contrast, are at earlier stages in terms of developing an overarching approach to vulnerability issues. Ofwat is considering adopting a consumer vulnerability strategy and is prioritising considerations around affordability, particularly through the current price review process. The FCA, a relatively new organisation with a new remit and responsibilities, has begun developing a vulnerability strategy, and is only beginning to pull all the strands of its work together as an approach to consumers in vulnerable circumstances. During the course of this research all the regulators expressed the desire to share learning and collaborate where possible on this important topic.

... regulators have carried out work over the years on issues that affect consumers in vulnerable circumstances, until recently this has been fairly limited and ad hoc but they are now seeking to develop more strategic approaches to consumer vulnerability.

These developments are very welcome but the critical issue is what happens in practice. The regulators must ensure that:

- They make it clear what they have done, what they are doing and what they plan to do to engage and tackle consumer vulnerability.
- Tackling consumer vulnerability underpins the work of the whole organisation, including their approaches to competition and economic issues such as cost reflectivity.
- Their strategies are backed by clear work programmes and systems to monitor the effects for consumers of their actions and of developments in the market.
- They are ready to intervene to use their powers to the maximum to protect consumers in vulnerable circumstances.
- They develop close contacts with organisations working with consumers in vulnerable circumstances and involve them in monitoring the effectiveness of their efforts.

Although it is challenging, it is vital that the regulators have a firm basis to operationalise their approaches to consumer vulnerability. These findings underline the importance of organisational commitment and backing at senior level combined with effective internal processes. Other crucial ingredients include having a sound evidence base, supported by rounded consumer research to ensure that the regulators stay fully in touch with the factors that place consumers at risk in these essential services.

Regulators should set a series of outputs and outcomes to help evaluate the effectiveness of their attempts to tackle consumer vulnerability and regularly report on progress.

To this end the regulators should establish a means of 'external auditing' to help inform and evaluate their progress. This could be done through development of external 'challenge groups', for each regulator or jointly, which involve organisations and experts working with consumers in vulnerable circumstances. This should be underpinned by a clear mechanism so that external input is taken on board and seen to be so. This should not be a one-off exercise but one that becomes an integral part of the regulators' consumer vulnerability policies and monitoring. So, for example, the challenge groups would have a role in helping to set outputs and outcomes.

The role of the companies

Ultimately the success of the efforts of the regulators in tackling consumer vulnerability revolves very much around the responsiveness of the companies. This means recognising that company behaviour and policies can greatly add to the risk of consumer vulnerability, and taking practical steps to eliminate poor practices and learn from good practice. The regulators all have different approaches to this issue, reflecting their various legislative remits, differing market contexts and differing approaches, and it will be crucial to assess the effectiveness of the different approaches.

The role of government

While the regulators have a central role to play, government too has a critical role in tackling the causes and consequences of consumer vulnerability in these essential services. It is clear that there is often a gap between the expectations of consumers and the public about what regulators can do and their actual statutory powers. Wider social policy is seen as the responsibility of government but governments frequently leave key issues such as the affordability of essential services to the regulators and companies. The interests of consumers in these sectors are often in danger of being stranded between regulators, government and companies, with especially serious implications for people in vulnerable circumstances.

As a result the role of government in tackling consumer vulnerability in essential services needs to be examined and articulated clearly, particularly to identify where remedies should be the responsibility of government.

Methodology

The findings are based on a combination of desk research and extensive interviews with a range of senior staff at the four regulators (we did not interview external organisations as part of this work in line with the research brief).

Structure of report

The next section provides an overview of key developments, notably the challenges facing the regulators as a result of the changes taking place in their sectors, and the changing approaches of the regulators to consumer vulnerability.

This is followed by sections on each of the individual regulators (Ofgem, Ofwat, Ofcom and the FCA) that discuss the key findings from this research. The final section sets out key conclusions and recommendations that have emerged from this work.

Wider social policy is seen as the responsibility of government but governments frequently leave key issues such as the affordability of essential services to the regulators and companies.

... the changing approaches of the regulators to consumer vulnerability... is followed by sections on each of the individual regulators (Ofgem, Ofwat, Ofcom and the FCA) that discuss the key findings from this research

2. Overview of what's been happening

2.1 The challenges facing the regulators

Three of the four regulators (Ofgem, Ofcom and Ofwat) involved in this research have traditionally been involved in work aimed at tackling consumer vulnerability issues that has been underpinned by their statutory duties. All the regulators (and their predecessor bodies) have statutory duties to protect consumers' interests, and Ofcom has an additional parallel duty for citizens' interests. In addition, although the legislative frameworks for Ofcom, Ofgem and Ofwat do not explicitly refer to 'vulnerable consumers', these regulators are required to have regard to certain consumers who are typically:

- People with disabilities
- People of pensionable age
- People on low incomes
- People living in rural areas

The injunction to have regard to particular groups does not prevent the regulators from having regard to other groups or descriptions of consumers. This research has shown that these statutory duties to have regard to particular consumers have not proved to be barriers to the development of broader approaches to consumer vulnerability. In fact such an approach is seen by the regulators as crucially important to meet their duties to protect consumers' (and citizens') interests. The FCA's statutory duties are not set out in the same way but nevertheless the FCA is required to have regard to, for example, the differing degrees of experience and expertise of different consumers.

Until recently regulators approached issues relating to consumer vulnerability in ad hoc ways that in particular reflected their duties to have regard to certain 'groups' of consumers as outlined above, and in response to issues that have arisen such as the companies' debt management policies and practices. Although their plans are at different stages, it is striking that the regulators have now recognised, or are in the process of recognising, the need for much more strategic approaches to consumer vulnerability. This has been precipitated by a more rounded understanding of the factors that contribute to consumers being in vulnerable situations in relation to these essential services.

A major reason for the shifts in the regulators' approaches is that the sectors they regulate have changed significantly, giving rise to different types of problems and challenges. Substantial changes have taken place for example in the communications sector, since the years when BT was the dominant phone provider and the main focus of regulation. The entry of a number of new companies into this market, coupled with major changes in communications technologies, have brought not only benefits but also risks for consumers and thereby new challenges for Ofcom.

A major reason for the shifts in the regulators' approaches is that the sectors they regulate have changed significantly, giving rise to different types of problems and challenges.

Similarly, the energy sector looks very different to when gas and electricity companies were first privatised. Although some smaller suppliers have entered the market, a handful of large suppliers remain dominant. The affordability of energy bills is a significant problem facing increasing numbers of households. Retail energy prices are no longer directly regulated but there are continuing challenges for Ofgem in ensuring that the energy market is fully competitive, easy to navigate and transparent.

Ofwat, as the water regulator in England and Wales, has recognised that affordability of bills for water and sewerage services is a prime concern for many households who are under growing financial pressures with living costs. Other important consumer issues such as billing information, access to support services, and the quality of complaint handling also feature among the issues facing Ofwat.

The FCA is a relatively new regulator, having replaced the Financial Services Authority (FSA), and it covers services such as banking and insurance which have presented consumers with a raft of problems in recent years. The FCA is facing important new challenges as it took over responsibility for regulating consumer credit in April 2014. This is an area of particular significance for many consumers in vulnerable circumstances as it covers hire purchase, credit card issuers, payday loan companies, pawnbrokers, debt management and collection firms and providers of debt advice.

Alongside these changes, the position of the regulators has become increasingly high profile, and they have faced political and other external pressures to bring about tangible improvements in these services for consumers. At the same time, there has been a shift in their understanding of what causes consumer vulnerability. While the lists of 'groups' of consumers outlined above in their statutory regulatory duties (apart from the FCA) were important in ensuring that these consumers were not marginalised, grouping consumers in this way fails to address the nature and extent of vulnerability. Labelling some consumers as 'vulnerable' also serves to let the companies off the hook by implying that it is only consumers' circumstances that matter, thereby ignoring the role of the companies. Moreover, the idea of a more inclusive approach is increasingly gaining acceptance, for example, in the BSI standard on Inclusive Service that recognises the wide range of factors that contribute to consumer vulnerability.

Labelling some consumers as 'vulnerable' also serves to let the companies off the hook by implying that it is only consumers' circumstances that matter, thereby ignoring the role of the companies

2.2 Developing a better understanding

Although their plans are at different stages, it is highly significant that the four regulators recognise the need to have a better understanding of consumer vulnerability that goes beyond assuming that certain groups of consumers are 'vulnerable'. This approach recognises the fluidity of vulnerability, that it is not a static concept. Consumers can move into and out of vulnerable situations depending on their personal circumstances and life events, such as bereavement, illness, and unemployment.

In addition, the regulators clearly recognise that consumers can be placed in vulnerable situations, or have their position exacerbated by developments in the market or as a result of company policies or behaviour. Consequently, there is a general recognition that vulnerability can result from a combination of consumers' circumstances, the workings of the market and company practices or poor performance.

The regulators have started to recognise that consumer vulnerability is a more complex, dynamic concept

The regulators have started to recognise that consumer vulnerability is a more complex, dynamic concept than can be captured in list form and have been developing plans and policies aimed at reflecting this reality. This is extremely welcome but it inevitably leads to the big question of how the regulators put this approach into practice and whether they can achieve much-needed changes in their sectors for consumers as a result and how much depends on the behaviour of companies and the actions of government.

The next sections discuss the approaches of each regulator to consumer vulnerability, the practical steps they are taking, and the issues they face in doing so.

3. Ofgem

3.1 Introduction

Ofgem (the Office of Gas and Electricity Markets) is the national regulator for the electricity and gas companies in Britain, and its legal framework is determined by the UK government and the EU. It does not regulate the off-grid energy sector, such as heating oil. Ofgem has powers to set price controls for gas and electricity distribution and transmission as these are monopolies but it does not regulate energy retail prices. Its role is to protect the interests of current and future consumers and to do so, where appropriate, by promoting competition. Among other responsibilities, Ofgem sets statutory complaint-handling standards for the regulated companies and monitors companies' compliance with their licence obligations.

Ofgem's role is to administer and monitor companies' compliance with a range of government programmes including the statutory Warm Home Discount and Government Electricity Rebate. The energy regulator has a range of other core regulatory functions, including some relating to the rollout of smart metering, as well as provision of advice to the Department of Energy and Climate Change (DECC) programme responsible for the roll-out. Ofgem also administers a number of environmental schemes on behalf of government, including the Energy Companies Obligation (ECO), the Renewable Heat Incentive, the Feed-in Tariff (FiT) scheme, and the Renewables Obligation.

The focus of this research is on Ofgem's role in relation to regulation of the retail energy market and of the network companies, specifically in the context of its consumer vulnerability strategy.

3.2. Powers and approaches to consumer vulnerability

Legal framework

The principal objective for Ofgem is to protect the interests of existing and future consumers of electricity and gas conveyed by distribution or transmission systems.⁷ The functions of Ofgem are to be carried out in a manner best calculated to achieve the principal objective wherever appropriate by promoting effective competition. However, when Ofgem carries out its functions to promote competition, it must consider to what extent the consumer interest would be protected by carrying out its functions in that way, and if there is any alternative means of doing so which would better protect those interests.⁸ The interests of consumers include the reduction of greenhouse gases, security of supply, and delivery of the EU Third Energy Package.⁹

... when Ofgem carries out its functions to promote competition, it must consider to what extent the consumer interest would be protected by carrying out its functions in that way, and if there is any alternative means of doing so which would better protect those interests.

⁷ Electricity Act 1989 (EA) s. 3A, Gas Act 1986 (GA) s. 4AA.

⁸ EA, s. 3A(1B) and (1C), GA 4AA(1B) and (1C).

⁹ <http://bit.ly/1BfRPRH>

When carrying out its duties, Ofgem needs to have regard to:

- ensuring that all reasonable demands for electricity and gas are met
- the needs of licence holders to finance their activities
- the needs of sustainable development.

Ofgem is also required to have regard to the interests of the following groups of consumers:

- People who are disabled or chronically sick
- People of pensionable age
- People on low incomes, and
- People living in rural areas¹⁰

In addition, both the EU electricity and gas Directives place an obligation on Member States to ensure that there are adequate safeguards in place for vulnerable consumers, while leaving the definition of vulnerability up to each Member State.¹¹ Under both Directives, Ofgem has an obligation to contribute to the protection of vulnerable consumers.¹²

Companies' obligations

Ofgem has a number of regulatory tools at its disposal including company licence conditions, guidance and industry codes. For example, there is a general duty to ensure that domestic customers are treated fairly in new robust Standards of Conduct (see below); requirements on suppliers and networks to provide tailored services to customers with additional communication and safety needs as part of the Priority Services Register legislation; a Smart Metering Installation Code of Practice underpinned by licence which aims to ensure all customers, including those who are vulnerable, are protected and can access the benefits of smart metering; safeguards to ensure customers in debt are treated fairly including ability to pay principles; licence conditions in place around prepayment meters (PPMs) and associated guidance; information about bills, tariffs and tariff comparisons. There are a number of detailed provisions covering the offer of tariffs and contracts, including marketing.

...this has enabled Ofgem to direct fines money to support vulnerable customers.

Following its Retail Market Review (RMR), Ofgem took steps to formalise and incorporate standards of conduct for the supply companies in their licence conditions and these came into force in August 2013. The standards require suppliers and any organisations that represent them, such as brokers or third party intermediaries, to ensure that each domestic customer is treated fairly. The Energy Act 2013 gives Ofgem new powers to impose consumer redress orders for the breach of licence obligations.¹³

¹⁰ EA, s. 3A (3). GA 4AA(3)

¹¹ Directive 2009/72 (Electricity) Article 3(7), Directive 2009/73 (Gas) Article 3(3).

¹² Directive 2009/72 (Electricity) Article 36, Directive 2009/73 (Gas) Article 40.

¹³ Energy Act 2013 s. 144

In practice this has enabled Ofgem to direct fines money to support vulnerable customers. For example in July 2014, British Gas was forced to pay £566,000 in compensation to affected customers and £434,000 to help vulnerable customers via the British Gas Energy Trust after they mis-sold to customers.

Ofgem also has enforcement powers in relation to unfair contract terms.

Government guidance

In carrying out its functions Ofgem is required to have regard to the guidance on social and environmental matters issued by the Secretary of State.¹⁴ It must also carry out its functions in a manner best calculated to implement or ensure compliance with binding decisions taken by either the Agency for the Cooperation of Energy Regulators (ACER) or the European Commission when acting under the relevant European Union legislation.¹⁵

The current Social and Environmental Guidance makes the general point that, when the government wishes to implement specific social or environmental measures which would have significant financial implications for consumers or for the regulated companies, these will be implemented by Ministers, rather than Ofgem, by means of specific primary or secondary legislation.¹⁶

The current Guidance sets out a specific aim to eliminate fuel poverty as far as reasonably practicable among households in England, Scotland and Northern Ireland by 2016, and in Wales by 2018.¹⁷ Ofgem is expected to make a significant contribution to the government's objectives and is said to have an "important and wide responsibility" in relation to social issues, including having particular regard to those on low income and vulnerable groups. The guidance asks Ofgem to take a strong lead in coordinating and ensuring that consumers on low incomes (or who are otherwise vulnerable to fuel poverty) are able to benefit from competitive markets.¹⁸ The current guidance asks Ofgem:

- to monitor and report on the working of the market, particularly in regard to the companies' social programmes
- to promote transparency and the availability of information
- to ensure that prepayment customers are not disadvantaged
- to address issues which have a particular impact on low income and vulnerable consumers and those in receipt of Pension Credit and in particular work to reduce levels of disconnections and arrears
- to eradicate mis-selling and

The guidance asks Ofgem to take a strong lead in coordinating and ensuring that consumers on low incomes (or who are otherwise vulnerable to fuel poverty) are able to benefit from competitive markets.

¹⁴ EA s. 3B, GA s. 4AB. The most recent version is here: <http://bit.ly/WkzwwV>

¹⁵ EA s. 3E, GA s. 4C.

¹⁶ DECC 'Social and environmental guidance to the Gas and Electricity Markets Authority', para 22.

¹⁷ Ibid, para 2.

¹⁸ Ibid, para 19.

- to improve the quality of service and try and develop incentive mechanisms which will extend the gas network to deal with fuel poverty.

The issue of social and environmental guidance was addressed in the DECC review of Ofgem and this took the view that the regulatory framework had been unable to evolve in line with changing government priorities.¹⁹ It attributed this to a combination of broad statutory duties and weak guidance and this guidance will be replaced in the future by a strategy and policy statement.²⁰ The government's guidance to Ofgem may well be revised under the forthcoming fuel poverty strategy for England which is due to be published later in 2014.²¹

The Energy Act 2013 contains provisions to introduce a new Strategy and Policy Statement (SPS) setting out Government's strategic priorities for GB energy policy. This is under development and expected to replace the existing guidance on social and environmental matters. Ofgem will have to have regard to the strategic priorities in the SPS when carrying out its regulatory functions.

3.3 Ofgem's approach to consumer vulnerability

How it is expressed

Ofgem was the first regulator to adopt an explicit consumer vulnerability strategy. This arose in particular because of the intense pressure on Ofgem in recent years to examine and address the failings of the energy market, including the effects for consumers in vulnerable circumstances.

The strategy describes how the regulator defines and approaches what it describes as the complex issue of vulnerability. It is intended to cover the next five years of its work; and Ofgem's stated intention is to work to embed the strategy and the use of the risk-based approach across the organisation. (Ofgem 2013a)

The strategy has a number of purposes: it defines Ofgem's thinking; it provides a way for people in Ofgem to think about vulnerability; and it sets out expectations of the companies. It therefore provides an internal prompt; intellectual framework; and a toolkit.²²

The overarching objective of the strategy is to protect and empower customers in vulnerable situations in the energy market and to ensure equality of access to market benefits. Customers should not be at a disadvantage because of their situation. Rather than relying on a list of assumed 'vulnerable groups', the strategy is based on a broad understanding of the range of contributory factors and these include the role of the market:

¹⁹ DECC 'Ofgem Review Final Report' (2011) paras 76-80.

²⁰ Energy Act 2013 Part 5.

²¹ Energy Act 2013 s. 145.

²² Ofgem interview 7 February 2014

‘Consumer vulnerability also recognises that vulnerability can be complex, multidimensional and transitory. Vulnerability is not just about an individual; the market can cause or exacerbate vulnerability, and different consumers may be vulnerable in different situations.’ (Ofgem 2013a)

While recognising that any consumer can face detriment in a market, Ofgem’s work under the strategy focuses on those consumers in vulnerable situations who are most in need of protection or support. Vulnerability is defined as when a consumer’s personal circumstances and characteristics combine with aspects of the market to create situations where he or she is:

- *significantly less able than a typical consumer to protect or represent his or her interests in the energy market;*
- *and/or significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial.*

(Ofgem 2013a, p12)

Ofgem’s approach is based on looking at risk factors that contribute to vulnerability which stem from personal circumstances as well as from the energy market itself. The strategy recognises that the causes of vulnerability are complex and multidimensional, and that vulnerability can be transitory, ongoing or long-term.

Ofgem’s approach is based on looking at risk factors that contribute to vulnerability which stem from personal circumstances as well as from the energy market itself.

To frame its work, Ofgem has developed a model to illustrate the types of risk factors and how they interlink (Ofgem 2013a). This encompasses individual characteristics and capacity (including those of other members of a household) and the design and delivery of goods and services. The latter includes the actions or behaviour of the supply and network companies, the impact of their products and processes; as well as Ofgem’s own impact as regulator. Examples cited by Ofgem of market-related risk factors include complex information and tariffs that can act as barriers to engagement or decision-making; sales pressure tactics; and failure to provide accessible or inclusive communications or customer services. (Ofgem 2013a)

How the strategy has developed

Ofgem’s focus on issues related to consumer vulnerability has changed markedly over time and demonstrates a shift away from reliance on competition to provide the solutions. Contributory factors include the government’s social and environmental guidance on Ofgem’s role in helping to meet fuel poverty targets, as well as its duties to have regard to specific ‘groups’ of consumers.

In addition, Ofgem's approach to consumer vulnerability has been informed by work on its social action strategy, and by subsequent work relating to the energy probe and the RMR. However, in recent years there has been a profound shift to articulate Ofgem's role with greater clarity through the development of its consumer vulnerability strategy.²³

Ofgem's 2008 Energy Supply Probe found that the market was not working in the best interests of consumers, with vulnerable consumer groups being disproportionately affected, and it highlighted ways in which the energy market contributes to consumer vulnerability (Ofgem 2008a).

Findings included ways in which people in low income groups and older people among other consumers were disadvantaged by the way the energy market was working. (As a result of the Energy Supply Probe, Ofgem developed a package of measures to improve the functioning of the market.)

Ofgem's subsequent RMR identified failings in the energy market including difficulties faced by 'vulnerable consumers' (Ofgem 2012). As a result of this review, Ofgem has introduced a raft of measures aimed at supporting consumers in vulnerable circumstances among the generality of consumers. These include measures to simplify the range of tariffs on offer; to improve the information provided to customers on bills and annual statements; to help vulnerable and indebted customers who were blocked from changing suppliers; and to improve the conduct of company sales and marketing activities. They also developed a package of measures specifically to support vulnerable customers, recognising that they may need additional support to engage in the market. This includes working with third parties such as Citizens Advice as part of an initiative called Energy Best Deal to ensure the delivery of face to face advice on switching, financial management, income maximisation checks and energy savings.

More broadly, Ofgem maintains that social issues have always featured in its work to some extent, according to our interviews. Although there was formerly more reliance on competition and switching to overcome barriers for consumers, expectations about the need for fairness and equity in the provision of this essential service have been a developing driver. While competition and the role of incentives to improve company behaviour remain highly relevant, the implications of the changing context facing energy consumers mean that issues of affordability and fairness have become more acute in recent years due to rising energy prices and falling incomes.²⁴

Ofgem has also stated that its more rounded approach to vulnerability reflects similar approaches from a range of organisations including academics, consumer organisations, the OFT, the Financial Ombudsman Service, BSI and the European Commission

²³ ibid

²⁴ Ofgem interview 7 February 2013

Ofgem has also stated that its more rounded approach to vulnerability reflects similar approaches from a range of organisations including academics, consumer organisations, the OFT, the Financial Ombudsman Service, BSI and the European Commission (Ofgem 2013a).

The CCES itself played a significant part in the evolution of Ofgem's work in this regard. Ofgem responded positively to the CCES research findings that explored a 'risk factor' approach to consumer vulnerability (Centre for Consumers and Essential Services and eaga CT, 2011), followed by a workshop with Ofgem's consumer policy team.

Key gaps and areas of concern

Boundaries of responsibility

From our interviews, Ofgem does not perceive gaps in its statutory powers but is more generally concerned with what tools and powers are available to the regulator and what are the respective responsibilities of government and of the regulator (although there is an ongoing external debate about whether Ofgem should have powers regarding consumers in the off-grid market. This is seen as a matter for government to decide).²⁵

Ofgem does not perceive gaps in its statutory powers

A notable example is Ofgem's duty to ensure cost-reflectivity in energy company charges, which often results in poorer consumers paying more (Hirsch 2013). Ofgem will accept some limited cross-subsidy but wider issues relating to social policy and help for poorer consumers are seen as a matter for government.²⁶

But this raises some critical issues, for example, about how this approach meshes with Ofgem's consumer vulnerability strategy. Another crucial question is whether Ofgem has sufficiently reliable data from the energy companies on costs and cost allocation and is able to analyse the reality of cost reflectivity and its effects for consumers in vulnerable circumstances (George and Lennard Associates 2012).

There is a gap between external expectations of Ofgem and what it can actually do within its current legal powers, for example, on retail prices.

As part of the competition assessment that Ofgem carried out with the OFT and the Competition and Markets Authority, the energy regulator was asked by the government to establish whether energy charges are genuinely cost-reflective, using a forensic analysis of the cost differentials and criteria.²⁷ The results were awaited at the time of writing. If Ofgem concludes that some or all charges are cost-reflective and this still means higher charges for poorer consumers, this raises some crucial questions: whether there will be any public policy assistance or intervention to help poorer consumers, whether Ofgem will be given additional powers, or whether consumers will be left to cope with the effects.

²⁵ Ofgem interviews 16 December 2013 and 7 February 2014

²⁶ Ofgem interview 7 February 2014

²⁷ House of Commons, Hansard, 4 Feb 2014: col 239

Expectations of Ofgem

There is a gap between external expectations of Ofgem and what it can actually do within its current legal powers, for example, on retail prices.

3.4. Putting policies into practice

Strategies and work plans

Understanding consumer vulnerability better will inform all its work, according to Ofgem's most recent annual report for 2012/13. The report was published before the formal adoption of its consumer vulnerability strategy but the language used reflects its approach, for example, in recognising that there are many different factors that might make someone at risk of being vulnerable – their individual characteristics or circumstances – and that the actions of the energy companies can make this worse.

More specifically Ofgem's consumer vulnerability strategy sets out an ongoing programme of work to identify and tackle vulnerability. Overall, Ofgem decided not to attempt to place any new rules or requirements on the energy companies at the outset but to learn more about the companies' practices and processes, share best practice and then review or develop regulatory obligations as appropriate. Ofgem has also stated that its intention is not simply to protect consumers in vulnerable situations from the market but ensure they have equal access to the market, and that it will use its regulatory powers to create the right framework to protect and empower them. (Ofgem 2013a). The extent to which Ofgem is prepared to use its regulatory powers in this way remains to be seen.

Activities and interventions

Putting the consumer vulnerability strategy into practice is a major issue, and Ofgem is seeking to build the approach into company behaviour. If the approach is properly internalised, it can produce a change in the mindset of the companies, according to our interviews with Ofgem. This requires a culture change: the companies need to approach how they treat consumers as a whole, and not view 'vulnerable consumers' as somehow separate. The default should be to meet the range of consumers' needs in provision of what is an essential service. The companies' licence obligations regarding standards of conduct are viewed by Ofgem as potentially very important in this regard and it is vital that Ofgem monitors compliance and is prepared to act swiftly if there are breaches.²⁸

This requires a culture change: the companies need to approach how they treat consumers as a whole, and not view 'vulnerable consumers' as somehow separate.

In terms of prioritising its work on the strategy, depending on analysis of issues and resources, Ofgem looks at evidence of a problem potentially affecting consumers in vulnerable circumstances and whether it has powers to intervene.²⁹ Examples of its work reflecting the strategy include the following:

²⁸ ibid

²⁹ Ofgem interview, 16 December 2013

Influencing energy companies' behaviour

Under the consumer vulnerability strategy, the energy companies are expected to think broadly about the potential for their business to create risk factors that may cause or exacerbate vulnerability, such as from interactions with individual consumers, the design of products, the ways in which they communicate or the knowledge and skill of their staff. Companies are expected to provide an inclusive, responsive and effective level of service recognising that consumers have different needs, abilities and personal circumstances that can give rise to detriment when interacting with a market. Ofgem suggests that identifying and considering standards, such as BSI Standard 18477 for Inclusive Service, is one approach companies can use to review and develop their processes over time. (Ofgem 2013a)

As part of this process, Ofgem has recently contacted the major energy suppliers about what they are doing regarding consumers in vulnerable circumstances, and will then map the responses, which apparently vary a lot between the companies. It is not clear yet how Ofgem will then proceed but there is likely to be process of discussion about best practice with the companies.

Standards of Conduct

Ofgem has intervened to place formal enforceable obligations on energy suppliers to treat customers fairly through new Standards of Conduct that took effect in August 2013. These require suppliers and any organisations that represent them (such as brokers or third party intermediaries) to ensure that each domestic customer is treated fairly. The decision was taken to introduce the Standards as binding licence conditions because voluntary interventions had not, in Ofgem's view, resulted in improved interactions between consumers and suppliers (Ofgem letter from Maxine Frerk, Partner, Retail Markets and Research to energy companies, government, and consumer bodies, 28 June 2013)

The Standards of Conduct could be a significant instrument in helping to improve energy company practices with regard to consumers in vulnerable circumstances, according to our interviews with Ofgem. They cover the following areas:

- **Behaviour:** suppliers must behave and carry out any actions in a fair, honest, transparent, appropriate and professional manner.
- **Information:** suppliers must provide information (whether in writing or orally) which is: complete, accurate and not misleading (in terms of the information provided or omitted); communicated in plain and intelligible language; relates to products or services that are appropriate to the customer to whom it is directed; and fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence).
- **Process:** the supplier must: make it easy for the consumer to contact them; act promptly and courteously to put things right when they make a mistake; and otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent.

Priority services

A consultation on the future of the Priority Services Register (PSR) has recently been published by Ofgem as part of its consumer vulnerability strategy work programme. This includes changes to the definition of vulnerability to reflect the approach in its new strategy; a review of services, improving data sharing to better identify customers in vulnerable situations; and improved communications so customers are aware of their rights.³⁰

Qualitative and quantitative research has been carried out to inform the review, which included exploring consumers' perspectives on priorities for the energy companies' services in this regard.

Advice on switching

Ofgem is planning work on promotion and innovation in the provision of advice and support by the supply and distribution companies, as well as by third party intermediaries (TPIs) such as comparison services, collective switching schemes or advice provision. Ofgem has said that it wants TPIs to be accessible and helpful for consumers in vulnerable situations by providing trusted and independent advice (Ofgem 2013d). Ofgem is also considering whether the Energy Best Deal partnership with Citizens Advice Bureaux can be expanded. More broadly, the state of the market review that Ofgem is currently carrying out with the OFT and CMA, includes examining the demand side and the implications for consumers in vulnerable circumstances of difficulties in switching.

Ofgem is also considering whether the Energy Best Deal partnership with Citizens Advice Bureaux can be expanded.

Incentivising the network companies

Although the electricity distribution and gas network companies have a history of some form of social obligations, the recent price control reviews have given Ofgem an opportunity to intervene and set out its expectations of their role in this respect. Its consumer vulnerability strategy was being developed while these reviews were taking place and it helped to inform understanding of the potential role of the companies. For example, they have access to information about customers' circumstances; they can collaborate with suppliers, community groups, local authorities and other organisations to help tackle fuel poverty; and they can signpost consumers in difficulties to other sources of help and information. Having an explicit strategy made this process easier and helped to legitimise what Ofgem is trying to achieve, according to our interviews with Ofgem.³¹

The BSI standard on inclusive service is seen as very relevant by Ofgem in this regard, and it is referred to in some of the companies' business plans.

³⁰ Ofgem interviews 16 December 2013 and 7 February 2014 with update in June.

³¹ Ofgem interview 7 February 2014

The network companies vary in their understanding of consumer vulnerability, as reflected in their recent business plans. However, Ofgem expects them to ensure that they have proper structures in place together with appropriate staff training to meet their social obligations. The BSI standard on inclusive service is seen as very relevant by Ofgem in this regard, and it is referred to in some of the companies' business plans.³²

Ofgem believes the extent to which it can intervene to improve the performance of the network companies regarding social obligations is constrained by its statutory framework, and therefore there is a lot of reliance on incentive-based regulation. However, an important consideration is how to incentivise companies without rewarding them unnecessarily for work they should be doing anyway. Ofgem is currently working on how to monitor outcomes and what these should be. Another issue is how Ofgem can encourage the gas and electricity companies to work together to find solutions for off-grid consumers.³³

Ofgem's incentive-based regulation includes the Gas Discretionary Reward Scheme aimed at enabling network companies to offer customers in fuel poverty the opportunity to connect to the gas grid without an upfront connection charge. In addition, incentives are being introduced for electricity and gas distribution and transmission companies to identify and work with stakeholders to help support customers in vulnerable situations.

Tackling debt and disconnection

Over the years Ofgem has carried out a significant body of work on debt and disconnection issues aimed at protecting the interests of consumers in payment difficulties. A key part of this work is ensuring that customers in financial difficulties are treated fairly and that disconnection is a last resort. While it is not possible to cover this work in detail here, it should be noted that Ofgem has found that, despite reduction in the number of overall disconnections, some suppliers still need to do more to avoid disconnecting customers that are having difficulty paying, and there are still some differences in the repayment arrangements agreed by different suppliers, particularly smaller suppliers (Ofgem 2013b).

At the time of writing Ofgem was reviewing the companies' debt assignment protocol and working with consumer groups to develop an advice guide on debt for companies, advice agencies and consumer organisations. They had also recently held a workshop for small suppliers on setting affordable payment levels together with the Money Advice Trust following concerns that suppliers were setting their debt repayment levels too high.³⁴

... some suppliers still need to do more to avoid disconnecting customers that are having difficulty paying...

³² ibid

³³ ibid

Energy charges

Ofgem has carried out extensive work on tariff differentials, especially as a result of the energy probe and the RMR, in particular on differentials between PPM and other tariffs, and between suppliers' in-area and out-of-area tariffs. Their recent investigation into standard credit and PPM differentials concluded that prices charged were cost reflective. However, Ofgem recognised that such differentials remain a matter of concern particularly regarding the effects for consumers on low incomes. They are hosting a roundtable with consumer groups, parliamentarians, and industry in the autumn to have an open discussion on the current situation.

In addition, Ofgem has introduced a number of measures as a result of the RMR aimed at simplifying the range of tariffs offered to consumers and to improve the clarity of bills and other consumer information. It is too early to tell what effect these measures will have for consumers in vulnerable circumstances among others.

Plans for a consumer vulnerability network

Initial plans (Ofgem 2013a) to set up some form of vulnerability network to enable Ofgem to link more closely with external organisations (for example, groups involved in a range of areas such as disability, mental health, and debt to learn about the issues different consumers are facing) have been delayed due to staffing changes and the need to consider the best ways to develop wider external links.

Research and learning

Ofgem has a history of aiming for an inclusive approach in its research work but the vulnerability strategy has reinforced best practice and encouraged greater exploration of the nature of vulnerability – to get 360 degree view of vulnerability, according to our interviews with Ofgem. Overall, the regulator looks at potential detriment generally but also recognises the need to understand the effects and extent of detriment for vulnerable consumers and it carries out further research to gain specific insights where necessary.

A wide range of consumers are involved in its research. These can include consumers facing communication barriers such as no internet access, problems with literacy or numeracy, or English not being the first language spoken at home. Resource and time pressures determine the extent to which Ofgem can look more in-depth at specific issues that arise in its research. Nevertheless, insight needs relating to more vulnerable consumers are routinely 'mainstreamed' into the research and insight planning process, according to Ofgem. Its research team has its own budget and also runs projects with other teams.³⁵

³⁵ Ofgem telephone interview 11 February 2014

Ofgem's annual tracking survey on people's engagement with the energy market covers the generality of consumers but has to be representative of Britain including vulnerable consumers. Ofgem has decided to retain face-to-face interviewing for this work and not rely on online methods in order to be as inclusive as possible.³⁶ Another way in which Ofgem seeks to ensure it is in touch with consumer views is through its Consumer First Panel that consists of about 100 people. The Panel's membership is refreshed annually and a recruitment process is currently ongoing. This includes over-recruiting people from BME communities, and young energy consumers, to ensure they are represented in sufficient numbers for their perspectives to be understood. Panel discussions are also supplemented by booster interviews (for example, with people who may find it difficult to participate in research events) from time to time on particular issues.

Examples of research used to inform specific policy work include qualitative and quantitative research on priority service registers aimed at exploring how the services are meeting people's needs and whether they can be improved. Research agencies were used in this and other work to ensure the research is inclusive and appropriately designed to engage sensitively with consumers in vulnerable circumstances (Britain Thinks 2013; Ipsos MORI 2013b; Ipsos MORI 2013c).

An important consideration for Ofgem is the need to achieve a balance between its requirements from consumer research and avoiding being overly intrusive, for example, by asking about their personal lives. For example, information about life events and multiple risk factors, as well as interactions with suppliers tends to arise during the course of interviews. Briefs given to research agencies therefore stress the need for sensitive recruiting and interviews, and it does not appear that Ofgem encounters major difficulties in finding people in vulnerable circumstances to be involved in its research.³⁷

Other recent research includes work on complaints and redress processes, specifically why so few consumers go to the Energy Ombudsman. This included looking at whether there are barriers more keenly experienced by vulnerable consumers. The findings are being used to inform what Ofgem does in order to improve company complaint handling processes (Gfk and Ofgem 2013). In summary, the quantitative survey revealed few differences in the profile of domestic customers who escalated and those who did not go on to escalate their complaint to the Energy Ombudsman. However, where slight differences were observed, it supported the hypothesis that those who are more likely to be vulnerable because of their state-pensioner status, disability and income level are marginally less likely to escalate their complaint.

³⁶ *ibid*

³⁷ Ofgem interview 11 February 2014

An interesting question is how Ofgem’s consumer vulnerability strategy can be applied to socio-economic analyses. For example, Ofgem commissioned research to inform its work on assessing the impact of policy actions on different consumer groups (Beyond Average Consumption, Centre for Sustainable Energy 2012). This research used statistical techniques to segment domestic energy consumers into a number of different groups, together with an ‘archetypes’ tool providing ‘pen portrait’ descriptions .

These findings included some further discussion of the key characteristics of what were described as small, socio-demographically discrete groups of households in the context of Ofgem’s remit to have particular regard to the groups of consumers specified in the legislation. However, reliance on the ‘groups’ approach contained in the statutory framework does not appear to be fully aligned with the broader approach of Ofgem’s consumer vulnerability strategy.

Ofgem is currently exploring whether mystery shopping could be carried out involving consumers in vulnerable circumstances. This could be very helpful in providing information about the companies’ practices and behaviour, for example, to look at how well standards of conduct are working and the ease or difficulties of certain transactions. At the time of writing Ofgem was looking into the various factors that need to be considered before embarking on this type of research, including ethical considerations.³⁸

... reliance on the ‘groups’ approach contained in the statutory framework does not appear to be fully aligned with the broader approach of Ofgem’s consumer vulnerability strategy.

Other Ofgem research on barriers to switching included qualitative research on ‘vulnerable consumers’ engagement with the energy market (2008b)³⁹, and ‘vulnerable customers’ experience and attitudes to switching (Ipsos MORI for Ofgem 2009). Qualitative and quantitative research on tariff comparability in 2011 looked how at how well different models for simplifying tariff comparison would work with ‘vulnerable consumers.’

A report on qualitative research undertaken with vulnerable consumers in 2011 for Ofgem (FDS International 2011) concluded that the energy market was still not operating as well as it could do and this was particularly true for vulnerable customers. Much of this research centred on barriers to switching but other issues were explored. Participants’ biggest concern was about the level of energy prices which were considered excessive, and PPM customers were particularly cynical as they believed they were paying more.

³⁸ *ibid*

³⁹ Interviewees included: people aged 75+; Polish people; single mothers; non-English-speaking people from Asian backgrounds; people with low numeracy and literacy skills; people without a bank account; and people in remote and rural communities.

Influencing policy

Although Ofgem's powers are limited by its statutory framework, the regulator can use its knowledge and experience to inform and influence wider public policy, for example, it has written to the Department for Work and Pensions (DWP) about the implications of Universal Credit and changes to Fuel Direct for energy consumers' ability to pay their bills and highlighted the distributional impacts of recent changes to the Energy Company Obligation.⁴⁰

Ofgem also contributes to the wider fuel poverty debate through the Government's Fuel Poverty Advisory Group where Ofgem has observer status as well as a range of other groups.

At EU level, among other work, Ofgem has been involved (together with Consumer Futures and the CCES) in the working group set up by Directorate-General for Energy (DG Energy) to produce guidance on 'vulnerable consumers' in the energy market. This includes discussion of factors that contribute to consumer vulnerability, and it makes recommendations for the relevant stakeholders on concrete actions that can be taken to reduce the risk of vulnerability in the energy market and energy poverty (DG Energy 2013).

3.5 Organisational ownership and accountability

According to interviews for this research, the consumer vulnerability strategy informs work across Ofgem, mainly driven by the consumer policy team, for example, to inform recent network price control reviews. Information flow is seen as crucial. Ofgem stresses the importance of qualitative and quantitative data for its policy work and to inform interventions with the suppliers e.g. about failed payment arrangements. In some instances, simply requesting certain data serves to change company behaviour. The quality of company data can present a challenge as it can be very variable. Ofgem is therefore now trying to ensure that someone senior in each company signs off information submissions.

Board acceptance and leadership on the consumer vulnerability strategy are viewed as crucially important in embedding the approach across the organisation. In addition, many discussions take place internally about the strategy and its implications. The Director of Consumer Policy views the papers that go to the Executive Committee and can question whether consumer interest and consumer vulnerability have been properly addressed. Other teams regularly consult consumer policy staff early on in their work about the implications for consumer vulnerability. External challenges are also important, for example, input by the Consumer Challenge Group during the price control reviews of the electricity distribution companies included discussion of their social obligations.

At EU level... Ofgem has been involved (together with Consumer Futures and the CCES) in the working group set up by Directorate-General for Energy (DG Energy) to produce guidance on 'vulnerable consumers' in the energy market.

⁴⁰ Ofgem interview 16 December 2013

Impact assessments

Ofgem has produced new guidance for carrying out impact assessments that took effect in October 2013. Impact assessments will consider a broad range of distributional effects relevant to the policy proposal under assessment, according to the revised guidance. In considering socio-economic effects, Ofgem says that it will in particular have regard to the impact of proposals and decisions for people who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas, and other customers in vulnerable situations: reference is made here to the consumer vulnerability strategy. The potential for an option to directly or indirectly cause or exacerbate consumer vulnerability will also be considered, as will the positive effects of a proposal empowering consumers in vulnerable situations. The guidance around this is being updated to reflect a broader range of vulnerabilities (Ofgem 2013c).

The value to Ofgem of having an explicit strategy is that it provides a broader understanding of vulnerability...

Assessing outcomes

At the time of writing Ofgem was consulting on plans to monitor and evaluate the impact of its RMR package of remedies on the domestic retail market. The consultation states that this will include ‘...which aspects of our proposals are benefiting most consumers, and understand how specific groups of consumers (e.g. vulnerable) are being affected’. Ofgem is proposing to use some high level indicators for its evaluation and it notes that ‘...in a number of cases, certain indicators will take on greater importance at a segmented level, e.g. in assessing the impact on vulnerable customers in particular.’⁴¹

3.6 Key lessons and challenges

The value to Ofgem of having an explicit strategy is that it provides a broader understanding of vulnerability, particularly the greater impact for people in vulnerable circumstances when things go wrong. In particular, the strategy helps in understanding the potential fluidity of vulnerability. Having an explicit consumer vulnerability strategy is considered to be very helpful organisationally as provides a basis for how Ofgem addresses the issues in practice in policy work and decision-making. It is also very important for the purposes of regulatory transparency.⁴²

Although putting a broader approach to consumer vulnerability into practice might be viewed as challenging, Ofgem considers that this can be done by looking at issues broadly, then looking at levels of risk within situations and the causes, and then deciding whether more targeted interventions are needed on the basis of these analyses.⁴³

However, the key test will be the extent to which the approach is embedded in practice across Ofgem’s work and policy-making...

⁴¹ Ofgem letter to companies, consumer groups and others, 31 January 2014.

⁴² Ofgem interview 7 February 2014

⁴³ Ofgem interview 16 December 2013

However, the key test will be the extent to which the approach is embedded in practice across Ofgem's work and policy-making, including its work on competition and economic issues such as cost reflectivity. Equally important will be how successful Ofgem is in securing significant changes in the companies' policies and practices regarding consumers in vulnerable circumstances. It will also be critical to assess whether the Standards of Conduct are effective in influencing the companies' performance.

Another highly relevant question is whether and how Ofgem's consumer vulnerability strategy is able to tackle the 'poor pay more' issue in energy. This raises broader issues of concern about the respective roles of Ofgem and of government. While Ofgem's investigation of price differentials has concluded that there is no evidence of overcharging, Ofgem must consider what role it has in relation to affordability given its wider responsibilities to protect current and future consumers.

Finally, Ofgem should explore how it can inform and influence broader public policy to protect the interests of consumers in vulnerable circumstances.

Ofgem references

- Baker W, *Off-gas consumers Information on households without mains gas heating* Consumer Focus (2011)
- BritainThinks, *Vulnerable Consumers and the Priority Services Register: A report prepared for Ofgem*, Ofgem (2013)
- Centre for Consumers and Essential Services *Too many hurdles: information and advice barriers in the energy market*, University of Leicester and eaga CT (2011)
- Centre for Sustainable Energy, *“Beyond average consumption”: Development of a framework for assessing impacts of policy proposals on different consumer groups* (2012)
- Creative Research, *Tariff Comparability Models Volume 1 - Consumer qualitative research findings* (2011)
- DG Energy, *Vulnerable Consumer Working Group Guidance Document on Vulnerable Consumers* (2013)
- Energy UK, *The Energy UK Safety Net Protecting Vulnerable Customers from Disconnection* (2013)
- FDS International, *2011 Vulnerable customer research Report by FDS International*, Ofgem (2011)
- George and Lennard Associates, *The poverty premium and cost reflectivity*; internal paper for Consumer Futures (2012)
- GfK, *COMPLAINTS TO OMBUDSMAN SERVICES: ENERGY* GfK and Ofgem (2013)
- Hirsch D, *Addressing the poverty premium – Approaches to regulation*, Consumer Futures and the Joseph Rowntree Foundation (2013)
- IPPR, *A summary of IPPR findings on energy tariff price differentials* (2012)
- Ipsos MORI, *Switching Rates for Vulnerable Customers*, Ofgem (2008)
- Ipsos MORI, *Consumer reactions to varying tariff comparability* (2011)
- Ipsos MORI, *Customer Engagement with the Energy Market - Tracking Survey 2013* Ofgem (2013a)
- Ipsos MORI, *Research into the Priority Services Register and non-financial support for vulnerable energy consumers*, Ofgem(2013b)
- Ipsos MORI, *Ofgem Consumer First Panel – Research to inform Ofgem's review of the Priority Services Register*, Ofgem (2013c)
- Ofgem, *Social Action Strategy Update* (2007)
- Ofgem, *Vulnerable Consumers' Engagement with the Energy Market* (2008a)
- Ofgem, *Energy Supply Probe - Initial Findings Report* (2008b)
- Ofgem, *The Retail Market Review - Findings and initial proposals*, (2010)
- Ofgem, *The Retail Market Review: Domestic Proposals* (2012); and *The Retail Market Review – Updated domestic proposals* (2012)
- Ofgem, *Consumer Vulnerability Strategy; and Supplementary appendices to the Consumer Vulnerability Strategy* (2013a)
- Ofgem, *Domestic suppliers' Social Obligations: 2012 annual report* (2013b)
- Ofgem, *Impact Assessment Guidance* (2013c)

Ofgem, *Third Party Intermediaries: exploration of market issues and options* (2013d)
Ofgem website: <https://www.ofgem.gov.uk/about-us/how-we-engage/consumer-issues>,
accessed 25.11.2013
Ofgem Consumer First Panel - Year 4: Second workshops *Consumer engagement with the energy market, information needs and perceptions of Ofgem* (2012)

4. Ofwat

4.1 Introduction

Ofwat (the Water Services Regulation Authority) is the economic regulator of the water and sewerage sectors in England and Wales, which currently comprises 31 regulated companies (as of February 2014). The majority of customers are served by monopoly suppliers for their water and sewerage services, unlike the other three sectors where there is competition for customers.⁴⁴ Every five years, Ofwat sets the price and service packages ('price controls') that each water company must deliver over the following five-year period. At the time of writing, Ofwat was in the process of the periodic review for price controls that will take effect from 2015. The focus of this price review is to enable the companies to deliver what customers want in an efficient, sustainable and long term way.

Under its new risk-based approach, Ofwat focuses its activities on the areas that present the greatest risks to customers and the outcomes they value. This applies to all its work, such as policy development, regulatory reporting and setting price limits.

Ofwat's primary duty is to protect the interests of consumers wherever appropriate through the promotion of competition, which is currently available through new appointments (which allow one water company to replace another water company in a specific area) and water supply licensing, which is limited to very large business customers. Ofwat is working on a programme of market reform in line with the Water Act 2014, which makes provision to extend competition to all non-household customers.

Under its new risk-based approach, Ofwat focuses its activities on the areas that present the greatest risks to customers and the outcomes they value.

This research focuses on Ofwat's role in relation to regulation of the water and sewerage services in England and Wales, specifically in the context of consumer vulnerability.

4.2. Powers and approaches to consumer vulnerability

Legal Framework

Under the Water Industry Act 1991, Ofwat is required to exercise its powers and duties in a manner which it considers is best calculated to further the consumer objective, ensure that water companies carry out their functions properly, and ensure that they are able to finance their functions. The consumer objective is to protect the interests of consumers, wherever appropriate by promoting effective competition. In furthering the consumer objective Ofwat, similar to Ofgem, is required to have regard to the interests of:

- people who are disabled or chronically sick
- people of pensionable age

⁴⁴ There are separate regulatory arrangements for Scotland – this report is only concerned with England and Wales.

- people on low incomes, and
- people living in rural areas

This does not exclude it considering the interests of other groups of consumers.⁴⁵

Ofwat is required, when exercising its powers, to have regard to any social and environmental guidance issued by the Secretary of State.⁴⁶ Under the Water Act 2014, the social and environmental guidance will be replaced by a statement of strategic priorities and objectives, similar to that proposed for Ofgem.

Unlike Ofgem and DECC, Defra did issue a combined statement of strategic priorities and objectives with social and environmental guidance in 2013.⁴⁷ This provides that Ofwat shall, as a matter of priority, keep under review whether companies are taking sufficient action to have a measurable positive impact on the needs of those customers that may struggle to afford their charges. It is also obliged to report annually on this to the Secretary of State.⁴⁸ Within the Social and Environmental Guidance, Ofwat is supposed to work positively with those companies that wish to bring forward social tariffs. In doing so, Ofwat must have regard to another set of guidance issued by Defra on social tariffs.⁴⁹

Unlike Ofgem and DECC, Defra did issue a combined statement of strategic priorities and objectives with social and environmental guidance in 2013.

Ofwat is in addition supposed to incentivise companies to ensure that their debt management practices reflect best practice in the sector. It is also required to keep under review its duties to the particular groups spelled out in the legislation bearing in mind the information from the Vulnerable Groups regulations and the government's wider policy approaches to meeting the needs of vulnerable groups.

As regards imposing obligations on the companies, the licences contain relatively little in the way of detailed obligations. They require companies to have Codes of Practice on their relations with customers, on debt recovery practices⁵⁰ and on the treatment of leakages. This is not the end of the matter as certain customer facing obligations are also imposed through regulatory devices, notably the Service Incentive Mechanism (SIM) which is meant to capture customer experience of their water companies and feeds directly into the price control, something which is unique to Ofwat. The other level of protection is through the Guaranteed Standards Regulations providing for minimum standards and, in most cases, automatic payments, rather than relying on customers to claim when companies fail to comply with standards.

⁴⁵ Water Industry Act 1991 s. 2(2C).

⁴⁶ Ibid s. 2A.

⁴⁷ Defra 'Defra's strategic policy statement to Ofwat Incorporating social and environmental guidance' (2013)

⁴⁸ Priority VIII

⁴⁹ Defra 'Company Social Tariffs' (2012).

⁵⁰ Domestic households cannot be disconnected for non-payment of debt.

4.3 Ofwat's approach to consumer vulnerability

How it is expressed

According to the interviews for this research, Ofwat is cautious about having a definition of vulnerability.⁵¹ However, its approach to the issue is certainly wider than the 'groups' outlined in the legislation, and includes the recognition that any customer can be in a vulnerable situation, vulnerability can be short-term and people can move in and out of vulnerability. Ofwat is seeking to learn from other sectors and sources on this issue.

At present Ofwat does not have an explicit stated consumer vulnerability policy. What appears to be the most recent statement by Ofwat regarding consumer vulnerability arose from a workshop on affordability (Ofwat 2012a), in which the issue of affordability of water bills was seen as central. The presentation also referred to Ofwat's consumer protection duty with "particular regard to vulnerable customers" as one of the reasons why addressing affordability is important.

As well as affordability, innate, societal or situational factors and debt were listed in the presentation as other elements of vulnerability. Situational risk factors for affordability were described according to: working age and pensioner adults living alone; lone parents; unmeasured households in areas with high levels of metering, disability, and low income. Examples of behavioural indicators of affordability risk that were highlighted included: cancelling direct debit, changing payment date, customers saying they are stressed, being a debtor, having a prior history of debt, and receiving company support. (Ofwat 2012a)

How the strategy is developing

Ofwat is currently in the process of developing a consumer vulnerability strategy that would seek to ensure that there is greater company ownership of the issues. The strategy change will make consumer policy more visible. Overall, Ofwat is likely to aim to facilitate and promote a better understanding of vulnerability across the industry. However, there will still be minimum standards through, for example, the Guaranteed Standards Scheme. This is part of a wider re-consideration of Ofwat's strategic approach.

Through the process of the price review the independent Customer Challenge Groups (CCGs) provided their reports to Ofwat which outlined their views on the quality of the customer engagement, and the degree to which each company's outcome proposals reflected the results of that engagement.

Ofwat is cautious about having a definition of vulnerability. However, its approach to the issue is certainly wider than the 'groups' outlined in the legislation, and includes the recognition that any customer can be in a vulnerable situation, vulnerability can be short-term and people can move in and out of vulnerability. Ofwat is seeking to learn from other sectors and sources on this issue.

⁵¹ Ofwat interviews 12 February 2014

The aim has been for there to be a focus on positive engagement between companies and their customers, and then for the companies to demonstrate the outcome of this engagement to the regulator in their business plans. The CCGs' challenges to the companies included: identifying and consulting 'hard to reach' customers and proposing how they would support customers who need financial support.

Key gaps and areas of concern

Boundaries of responsibility

One issue that emerges is that of general consumer law. Because the companies are regional monopolies, a duty to supply customers has been placed upon them. The relationship between the companies and the customers is therefore a statutory one, rather than contractual.⁵² As the customer/company relationship is statutory, not contractual, water company customers do not have the normal protections of general consumer law. This is an area that Ofwat is currently exploring to see where there are gaps and whether it is possible to give them equivalent protections to those that would be available under general consumer law. The move towards an alternative dispute resolution (ADR) scheme for the water industry, discussed below, can be seen as part of this development.

As in other sectors, a key question is the respective roles and responsibilities of government and regulator, particularly in relation to social policy issues. Social policy is seen as sitting outside Ofwat's remit and the framework for considering such issues is given by the social and environmental guidance from DEFRA. By contrast, there is a different model in Scotland where both the economic regulator and Scottish Water are given explicit policy directions by Ministers on a variety of matters, for example, Scottish Ministers explicitly state that they want geographically averaged charging.

4.4 Putting policies into practice

Strategies and work plans

The issue of consumer vulnerability is not mentioned explicitly in Ofwat's most recent annual report. Its forward work programme refers to developing a "strategy for ensuring that vulnerable household customers and small businesses are listened to and their needs are met". Its 2010 strategy document on sustainability also referred to 'vulnerable customers', and said that Ofwat recognises the need to find new ways of protecting the most vulnerable customers to ensure they receive the services they need (Ofwat 2010a).

Social policy is seen as sitting outside Ofwat's remit and the framework for considering such issues is given by the social and environmental guidance from DEFRA. By contrast, there is a different model in Scotland...

⁵² Water Industry Act 1991 s. 52.

Activities and interventions

Ofwat's readiness to act on issues relating to consumer vulnerability and affordability needs to be viewed against the broader context of its recently adopted risk-based approach to regulation (Ofwat 2012b). This recognises that Ofwat's decisions on where to focus its action, and how it carries out work, are informed by an assessment of risks, with a more outcomes-focused approach to the way it regulates. Ofwat says that it will look at the potential advantages of proposed work in terms of benefits to end-consumers (existing and future), including the impact on the groups of consumers to whom Ofwat must have regard according to its statutory duties (Ofwat 2012b).

Debt

Ofwat has outlined a number of key actions which it proposes to take in the shorter and longer terms to find solutions to water debt problems (2010b). These include supporting social tariffs for specific groups where this is also expected to reduce the costs of debt for all customers; work on data sharing to improve company information about their customers; requiring the companies to manage with care changes in the way customers are charged; and highlighting good practice in debt management. Ofwat published a customer research study aimed at improving the understanding of behavioural responses to charging practices in the water industry among groups at risk of affordability problems (Accent 2012). It facilitated a water company workshop on the subject in 2012.

According to the interviews for this research, Ofwat's approach is designed to promote best practice in debt management but not to be prescriptive. However, Ofwat is involved in how information is provided to customers about debt recovery. For example, the water companies changed how they shared data with credit reference agencies – Ofwat's role was to say to the companies that they must update the information and tell customers how this is done. Monitoring in detail how debt collection itself works is not seen as a role for Ofwat but Ofwat has provided guidance and it will expose bad practice. The FCA is responsible for regulating the debt collection practice of financial institutions, including the debt collection agents that water companies sometimes use. It is vital that Ofwat and the FCA communicate effectively over this.

The Consumer Council for Water (CC Water) carries out assessments of company debt collection procedures. Ofwat is concerned about the overall impact of debt if bills are not paid but is also concerned about protecting customers from any malpractices of debt collection agencies.

Priority services

Through its work to improve the priority service registers operated by the licensed companies, Ofwat has been developing a broader interpretation of when consumers could be considered vulnerable with regard to water and sewerage services. For example, Ofwat's updated guidance on Priority Service Register (PRS) states that the register should be open to anybody who needs one of the services that a company offers, regardless of their age, health, disability, or indeed their lack of disability. Moreover anyone who is concerned about personal security in the home should be able to register for a password scheme (Ofwat 2010c).

The guidance on PSR gives examples of what specific consumer requirement(s) should be included, and these indicate that Ofwat is using a broader approach to consumer vulnerability in relation to their water or sewerage service. However, the description of the guidance is still based on the 'groups' set out in the legislation, that is, 'Services for disabled, chronically sick or elderly consumers'.

The examples cited include people who are:

- particularly vulnerable during supply interruptions, such as those whose health could be put at risk, or who may be unable to reach water bowsers or alternative supplies because of mobility problems
- particularly vulnerable during actual or potential drinking water contamination incidents, when advice to boil water for drinking or not to use water for drinking or cooking is issued
- may have problems in communicating or receiving information in the formats that the company usually provides
- may be vulnerable to bogus callers, or may need help to read their meter, to understand their bills, or to make arrangements to pay their bills. (Ofwat 2010c)

Affordability

Affordability of water bills, together with 'financeability', is one of the four key areas that Ofwat has specified for the next price control review period (Ofwat 2013c). Ofwat has been testing whether customers find the companies' plans affordable/acceptable, according to the following key criteria:

'How well has the company demonstrated that its proposals are affordable over 2015-20 and that it has used appropriate means to secure the affordability of bills for customers?'

Ofwat is using a broader approach to consumer vulnerability in relation to their water or sewerage service. However, the description of the guidance is still based on the 'groups' set out in the legislation, that is, 'Services for disabled, chronically sick or elderly consumers'.

‘How clear is it that the company’s proposals are affordable in the longer term? How far has the company demonstrated that it has explored all possible options to ensure that this is the case, for example, by the way it has set out its cost recovery proposals?’ (Ofwat 2013c, p148)

(At the time of writing, Ofwat had issued four draft determinations that set out the proposed prices that the specified companies can charge their customers from 2015 to 2020.⁵³)

Ofwat’s Chairman’s letter to the companies made clear that responsibility for ensuring that water bills fall in real terms rests with the companies, including provision of explanations to customers if this does not happen:

‘We are accountable to parliament and have been urgently considering our response to the recent debates across the political parties on affordability. Our response is (i) we have clearly set out that maintaining customer legitimacy in the sector is critical. (ii) There is an opportunity for bills to fall in real terms between 2015-20 and if they cannot companies must explain to their customer why not and (iii) the question of what to do about 2014 - 15 prices sits with the Boards of companies.’ (Ofwat 2013b)

Over the last couple of years Ofwat has been paying particular attention to improving its understanding of the factors that affect water affordability, in particular, what can be done to help people in payment difficulties and to improve company practices in managing and recovering debt.

According to Ofwat’s research, the choice of whether to pay metered or unmetered charges is a particularly important affordability risk factor for single pensioners or working-age adults living alone. In areas where more customers choose to have water meters, such as the south-west of England, unmetered bills tend to be higher, and Ofwat considers that these customers may be particularly at risk (Ofwat 2011). Affordability risk affects all types of households, but lone parents, working-age adults living alone and single pensioners are currently the most likely to have water affordability risks – particularly if they do not have water meters, according to this analysis.

Over the last couple of years Ofwat has been paying particular attention to improving its understanding of the factors that affect water affordability...

In terms of metering, Ofwat tries to maintain fairness between metered and unmetered households. There is an unmetered price differential which Ofwat has monitored through the approval of charges, and Ofwat has identified a fair balance between metered and unmetered charges as one of the existing charging features that it will expect companies to maintain (Ofwat 2014a).

⁵³ <http://bit.ly/1oM16bH>; <http://bit.ly/ZaftBw>

Ofwat cannot tackle issues of inequity within unmetered customers, and this issue will gradually diminish as more customers move out of unmetered provision according to the regulator.

Ofwat does recognise, however, that as metering levels increase, the pattern of who is affected by affordability risks will change and, for example, some families may find it more difficult to pay their bills because they will reflect more closely the volume of water used. The regulator therefore recognised the need to understand where and how these issues are likely to emerge and how best to help those affected. (Ofwat 2011)

... the assumption that having a water meter gives people control over the amount of water they use and therefore their bill, was not supported by the experiences of most metered respondents...

Research for CCWater on the effects of living in water poverty and people's coping strategies found that the assumption that having a water meter gives people control over the amount of water they use and therefore their bill, was not supported by the experiences of most metered respondents (Creative Research Ltd 2009). Current water efficiency practices were not seen as having a noticeable impact on the water bill because people in metered properties were already engaging in the obvious water reducing behaviours. Other methods such as buying water efficient appliances were unlikely to be feasible due to cost implications, according to these findings.

Ofwat has been involved in developing indicators of affordability risk, while recognising that measuring water affordability is complex (Ofwat 2011). Through this work, Ofwat sought to draw on external expertise through an independent advisory group on understanding water affordability. As a result Ofwat developed an income-based approach to measuring affordability.

Based on analysis of data from the Family Resources Survey (FRS), Ofwat has concluded that there are three key factors that drive water affordability risk for customers:

- Income: low income households spend a higher proportion of their income on their water and sewerage bills. They are more likely to report that they struggle to pay their bills or to be in debt.
- Where people live: water affordability risk is regional. There are more customers at risk in areas where bills are relatively high or where incomes are relatively low. But there are still a number of customers who are at risk even in areas with average or below-average bills.
- How people pay: customers who do not have water meters have more affordability risks. (Ofwat 2011)

Ofwat has also been keen to learn from the approach taken in fuel poverty in terms of the implications of this approach for water, in light of its work on developing indicators of affordability risk for water (see for example its response to the Hills Fuel Poverty Review call for evidence, 2011).

Ofwat has also been keen to learn from the approach taken in fuel poverty...

In general, Ofwat shares information with CCWater to gain their more frontline perspective on policy and complaint trends. It also shares information about programmes for research and collaborates with CCWater where appropriate.

Social tariffs

Water companies in England and Wales are allowed to offer social tariffs to help tackle affordability problems but they are not required to do so, unlike the situation in the energy sector (under Section 44 of the Floods and Water Management Act 2010). The Secretary of State's guidance on social tariffs sets out expectations for companies in England, and the Welsh Government has published guidance for companies operating in Wales. Ofwat's role is to have regard to the guidance in exercising its powers in connection with charges schemes. CCWater is continuing to work with a number of companies as they develop proposals for social tariffs and test customer acceptability.

Ofwat considers that its role regarding social tariffs is very much one of facilitating discussion and monitoring progress, according to interviews for this research. The regulator has brought the companies together to share best practice and reports back to Defra.

Improving customer service

Ofwat has been using its regulatory powers to develop incentives to link financial and reputational penalties and rewards to improve customer service in the water sector, alongside mandatory instruments such as the Guaranteed Standards of Service. In particular, the SIM has become a key regulatory instrument for Ofwat. Introduced in 2010, the SIM provides a national minimum standard incentive but this does not prevent companies putting forward their own outcomes (and incentives) for customer issues beyond those covered (Ofwat 2013d).

The purpose of the SIM is to reduce customer impact of service failures, and ensure that companies get things right first time. It measures two aspects of customer service delivery:

- where customers have made contact when something has gone wrong – for example, phoning about a billing error or writing to the company to complain; and
- how well the companies have handled all types of customer contacts, not just when things have gone wrong (measured through a customer survey)(Ofwat 2013e)

The SIM operates as a financial incentive because it affects the prices the companies are allowed to charge through the price control process. According to Ofwat the current SIM has worked well: customer complaints have reduced and customer satisfaction has increased in the sector. However, although the latest annual complaints report from CCWater shows that written and telephone complaints have fallen overall across the water sector in England and Wales, the consumer body says there is still much more to be done (CCWater 2013).

Further to an initiative by Ofwat, the water industry is introducing an ADR scheme for consumer complaints. Companies will continue to seek to resolve complaints under their own processes in the first instance. Unresolved complaints will then go to CCWater for mediation. If a complaint is still unresolved, it can go to ADR for adjudication. The ADR provider will publish information on these cases, identify and highlight themes and issues and help the sector to learn from complaints. The ADR process should be up and running by the end of 2014-15 and will be an adjudication system like an Ombudsman scheme. There will be lines of communication between Ofwat and the ADR provider – this is viewed as a way of obtaining intelligence, not another layer of enforcement.

...CCWater research shows that customers felt water companies should improve their communication...

It is also significant that the above CCWater research shows that customers felt water companies should improve their communication to help address customers' concerns over affordability and value for money (CCWater 2013). Ofwat has published its conclusions following a consultation on the future of the Service Incentive Mechanism from 2015 onwards. It confirmed that the SIM for 2015-20 will be similar in form and structure to the current SIM, albeit with more weight attached to the qualitative measures. (Ofwat 2014b).

Cost differentials

The main cost differentials for water and sewerage charges in England and Wales are linked to where people live in terms of regional differences, and which charging method they are on – whether their home is metered or unmetered – rather than to payment methods.

Regional differences in water charges are based on regional cost reflectivity and accountability, and any departures from this would be a matter of government policy/social policy. The companies have to explain what they are doing in providing services and are challenged on this. The costs of water are very localised – costs within areas can be very different, even the resources that are used. For example, it can cost less to serve customers if they are very close to a reservoir.

In terms of public policy, the only available State-funded assistance with regional water price differentials is focused on the South West of England, where consumers were given a £50 reduction in water bills from April 2013 (to run every year to at least 2020).

This policy stemmed from the findings of the Walker Review into affordability and charges in the water industry in 2009. The Review highlighted the historically high level of charges in South West Water's area that, in particular, include the cost of clean-up of a third of the country's bathing waters. (House of Commons Library Briefing Note April 2013)

... the only available State-funded assistance with regional water price differentials is focused on the South West of England...

As the use and extent of tariff discounts related to payment methods are relatively minor in comparison to energy for instance, Ofwat does not pay as much regulatory attention to this issue as Ofgem. Ofwat's charging principles and guidelines refer to a reasonable range of payment options that include the ability to pay frequent cash payments. Water customers have been able to pay by this method at no extra cost as part of a company's overall package to address affordability risks. Low income customers of Welsh Water have benefitted from discounts applied to accounts paid through Water Direct. Discounts are also applied to United Utilities customers' accounts where they pay direct to a social housing landlord. The water companies have had to demonstrate to Ofwat that direct debit discounts are justified, including the distributional impact as well as economic cost reflectivity.

Measuring performance

Ofwat's risk-based approach means that the companies are responsible for measuring and reporting on their performance. Water companies published information showing customers how they are performing against a range of indicators during 2012-13, the second year they have reported information in this way. Ofwat's stated intention is that this means it can spend more time focusing on those areas (or companies) where it needs to take action to protect customers' interests. Information published by the companies includes key performance indicators (as often as they like but at least once a year) and an annual risk and compliance statement. Ofwat says that it uses this information – and other sources of information such as customer complaints – to decide if it needs to investigate or take any action to address or prevent harm or loss to customers.

Research and learning

Ofwat commissions consumer research from time to time, often in conjunction with CCWater. This tends to focus on the whole customer base but questions are included relating to socio-economic factors, disability and ethnicity. Ofwat meets regularly with CC Water to discuss intelligence on consumer issues and, at the time of writing, CC Water was planning research on living with water poverty.

Consumer research commissioned by Ofwat itself also includes qualitative research based on behavioural economics to inform how it can improve its own and the companies' understanding of the impacts of different charging practices on customers in debt, or who are struggling to pay (Accent 2012). This research involved consumers in England and Wales, made up of people who were struggling to pay, or in debt, with their water bills. Each group included consumers with a mix of different payment methods, as well as metered and unmetered customers, people with irregular incomes, those with no bank account and people in social housing (Accent 2012).

Some of the findings from this research underlined the need for a better understanding among the companies of the situations faced by consumers in vulnerable circumstances. For instance, participants felt there was little understanding of – or attempt to understand – individual circumstances, and company communications were often wide of the mark in content and tone. (Accent 2012). Ofwat has said that these findings will help to inform its understanding of the financial and social impacts of different charging and payment practices on households struggling to pay for their water and sewerage services, and this knowledge will in turn inform its charging, debt and affordability policies (see Ofwat website reference).

Ofwat also intends to use information and learn more from the companies' business plans and the CCG reports emerging from the current price control review to enhance its understanding of these issues.

Influencing policy

As outlined earlier, Ofwat's expectation is that companies correctly identify the proper drivers for their relationships with their customers – the regulator tries to make clear what should be on the agenda, for example, the implications of central government policy, EU rules and other regulations.

Ofwat's recognition of its role in helping to ensure the affordability of water bills was highlighted in a letter from its Chairman to the water companies in October 2013, in which he highlighted the need for Ofwat to be accountable and responsive to social concerns:

'Our role is to protect the interests of customers and ensure that efficient firms are able to finance their functions. We do so independently, and this will continue, with wide support. But independence also relies on accountability and ensuring that we do listen to social concerns – be they about growth, sustainability or as now, affordability.' (Ofwat 2013b)

This letter was followed by a similar one from the Secretary of State in November 2013.⁵⁴

⁵⁴ <http://bit.ly/1IEI2kt>

4.5 Organisational ownership and accountability

At the time of writing, Ofwat's vulnerability strategy was under development with a view to sharing its thinking with key stakeholders in the coming months.

4.6 Key lessons and challenges

A fundamental issue is whether Ofwat formally adopts a consumer vulnerability strategy and how this is framed. Assuming this happens, a key challenge will be how this is embedded across the regulator's policy processes and work.

Equally important will be the extent to which Ofwat is able to ensure that that this approach is properly understood and put into practice by the companies. This raises the question of whether Ofwat is prepared to challenge the companies' approaches to consumer vulnerability, given that the regulator favours an incentive-based approach to regulation. In any case, Ofwat will need to monitor the success or otherwise of the companies' policies and practices in this regard. Our view is that Ofwat should be pro-active in ensuring that the water industry in England and Wales as whole adopts appropriate policies and practices to address the factors involved in causing consumer vulnerability in water services, using whatever instruments are appropriate and effective.

Our view is that Ofwat should be pro-active in ensuring that the water industry in England and Wales as whole adopts appropriate policies and practices to address the factors involved in causing consumer vulnerability in water services, using whatever instruments are appropriate and effective.

Ofwat references

- Accent, *Using Behavioural Economics to Encourage Water Bill payment by Debtors and Those who Struggle to Pay*, Ofwat (2012)
- CCWater, *Written Customer Complaints Complaint Handling in the Water Industry England and Wales* (2013)
- Brooker S and Taylor A, *Rating Regulators Ofgem*, Consumer Focus (2009)
- George and Lennard Associates, *Consumer vulnerability and disadvantage: Organisational approaches - report for Consumer Focus*, internal paper (2010)
- Creative Research Ltd, *Living with Water Poverty, Research Findings*, CCWater (2009)
- House of Commons Library, *Water bills in the south-west Standard Note: SNSC-5894*, 23 April 2013
- Ofwat, *Services for disabled, chronically sick or elderly consumers – guidance to companies Revised September 2008* (2008)
- Ofwat, *Delivering sustainable water – Ofwat’s strategy* (2010a)
- Ofwat, *A drain on society – what can be done about water debt?* (2010b)
- Ofwat, *Services for disabled, chronically sick or elderly consumers – guidance to companies* (2010c)
- Ofwat, *Affordable for all - How can we help those who struggle to pay their water bills?* (2011a)
- Ofwat, *Ofwat's response to the Hills Fuel Poverty Review call for evidence* (2011b)
- Ofwat, *RD 07/10: Ofwat’s review of the companies’ complaint handling procedures*, Letter to companies, 24 June 2010
- Ofwat, *Addressing affordability and debt workshop Delegate Pack* (2012a)
- Ofwat, *Delivering proportionate and targeted regulation – Ofwat’s risk-based approach* (2012b)
- Ofwat, *Forward programme 2013-14 to 2015-16* (2013a)
- Ofwat, Letter from Jonson Cox to water companies 31 October 2013 (2013b)
- Ofwat, *Setting price controls for 2015-20 – final methodology and expectations for companies’ business plans* (2013c)
- Ofwat, *Consultation on wholesale and retail charges for 2015-16 and charges scheme rules* (2014a)
- Ofwat, *Service incentive mechanism (SIM) for 2015 onwards – conclusions* (2014b)
- Ofwat website reference
http://www.ofwat.gov.uk/regulating/customerdebt/prs_web20120723behaviour
accessed 2.12.2013
- Ofwat website reference:
http://www.ofwat.gov.uk/publications/events/prs_web120709afforddebtwks
accessed 28.11.2013
- Ofwat website reference on social tariffs:
http://www.ofwat.gov.uk/regulating/charges/prs_web_chargespg_summary
accessed 2.12.12

5. Ofcom

5.1 Introduction

Ofcom is the national communications regulatory authority for the UK, and its legal framework is determined by the UK government and the EU. It regulates the fixed and mobile telecoms sectors and postal services, and has responsibilities regarding broadcasting and management of the radio spectrum. Ofcom is responsible for implementing the requirements of the EU Electronic Communications Framework as transposed into UK legislation, including provisions relating to universal service in fixed line telecoms. In addition Ofcom has had statutory duties since 2012 to protect the universal postal service.

Ofcom's powers include regulation of the prices charged by Openreach (BT's wholesale access division) for access to some of its main wholesale telecoms services as BT has been found to have significant market power in the delivery of these services. Ofcom is also responsible for setting, monitoring and enforcing statutory complaint handling standards for communications providers.

Ofcom is responsible for licensing all UK commercial television and radio services, and it has a statutory duty to set standards for broadcast content through the Broadcasting Code, which contains rules to provide adequate protection to potentially vulnerable viewers and listeners, including for example: matters affecting children, and protection for the public regarding harmful and/or offensive material, and misleading content. Ofcom has taken enforcement action in a number of cases where it considered that broadcasters did not take steps to provide adequate protection for potentially vulnerable audience members.

Due to time constraints, it has not been possible to explore the full breadth of Ofcom's activities and therefore the focus of this research is on its approach to consumer vulnerability in relation to regulation of fixed and mobile telecoms and broadband services. However, it is important to note that Ofcom's work and interventions on issues regarding consumer vulnerability to harm also includes postal services, broadcasting, internet content and spectrum and we have included some brief examples in this section.

... the focus of this research is on its approach to consumer vulnerability in relation to regulation of fixed and mobile telecoms and broadband services.

5.2 Powers and approaches to consumer vulnerability

Legal framework

Ofcom's founding statute is the Communications Act 2003 which in part implements the various EU communications Directives. Its principal duty is to further the interests of citizens in communications markets and consumers in relevant markets, where appropriate by promoting competition. Ofcom has a general duty to carry out certain EU obligations.

In performing these duties Ofcom must also have regard, as far as relevant, to the interests of people with disabilities, older people, of those on low incomes, as well as the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection.

Ofcom is also required to have regard to the different interests of people in the different parts of the UK, of the different ethnic communities within the UK and of people living in rural and in urban areas. In addition, Ofcom has a specific duty to encourage the availability of easily usable apparatus for the widest possible range of individuals, including those with disabilities. Ofcom also has a general duty to carry out consumer research on a variety of matters.

Ofcom has a number of other specific duties enshrined in legislation which are of relevance to consumers in vulnerable circumstances. It has a power to set general conditions (GC) making provision as Ofcom considers appropriate to protect end-users of communications services.⁵⁵ These conditions include:

- emergency call numbers
- public pay telephones
- minimum term contracts
- itemised bills
- transparency of information
- non-payment of bills
- price transparency for non-geographic calls, codes of practice and dispute resolution
- services for disabled people
- quality of service
- sales and marketing of mobile and fixed line telephony services

Ofcom has a duty to set general conditions for communications providers to ensure that they establish procedures, standards and policies in relation to, among other things, the handling of complaints, provision of remedies and redress for complaints, information about service standards and any other matter Ofcom considers relevant for the protection of customers. On this basis, Ofcom has established a single code of practice for complaint handling to be adopted by all communications providers, and has approved two ADR schemes.

Ofcom has powers to set such universal service conditions as it considers appropriate for securing compliance with the obligations set out in the universal service order by the government (under the EU electronic communications framework). The designated universal service provider is BT, except for Hull. The universal service order stipulates the following issues:

⁵⁵ Under s. 51 of the Communications Act 2003

- Publicly available telephone services at a fixed location
- Directories
- Directory enquiry services
- Public pay telephones
- Billing, tariff and payment options
- Special measures for end-users with a disability

Ofcom has imposed certain requirements in relation to these issues on BT through specific Universal Service conditions of which perhaps the most notable is the requirement for a social tariff for people on low incomes. BT's social tariff is called BT Basic, and it is available to people in receipt of certain means-tested benefits. The EU Universal Service Directive specifies that Ofcom should monitor the affordability of tariffs for those services which fall under the universal service obligation. In addition, Ofcom needs to consider whether or not these universal service obligations constitute an unfair burden on the providers and, if they do, to consider alternative means of funding their provision. KCOM is the Universal Service Provider in Hull and has similar obligations.

Ofcom also requires fixed and mobile communications providers to provide a range of services for disabled consumers, including access to approved text relay service for people who have hearing or speech impairments; free directory enquiries; priority fault repair (for fixed line only); third party bill management; and provision of bills and contracts in different formats. There are also other requirements relating to broadcasting services for disabled people, such as sub-titling and audio-description, and sign language.

Ofcom tackles abandoned and silent calls using its persistent misuse powers under the Communications Act (the Information Commissioner's Office is responsible for tackling other forms of nuisance calls).

Ofcom is required to establish a Consumer Panel which can give advice to Ofcom on a wide variety of issues and may also carry out research on Ofcom's behalf, as well as on its own initiative. Ofcom has its own duty to carry out research. Ofcom also has duties to have an Advisory Committee relating to older and disabled people (ACOD which now meets jointly with the Consumer Panel) and committees for different parts of the UK.

Ofcom also has responsibility for enforcing other legislation such as the Unfair Terms in Consumer Contracts Regulations (which are in the process of being replaced by provisions in the Consumer Rights Bill currently before Parliament); the Consumer Rights (Payment Surcharges) Regulations 2012 and the Consumer Contracts Regulations 2013.

In 2013, the government published its priorities for digital media and communications services and infrastructure, which included proposals for some changes in Ofcom’s statutory powers and duties as well as requests for the regulator to undertake specific work (Department for Culture, Media and Sport 2013). This was followed by publication of a formal agreement described as a pledge between government, industry and Ofcom to help consumers get the best out of their telecoms services through a Telecoms Consumer Action Plan. So far this includes action aimed at helping consumers to avoid unexpectedly high bills, bill transparency, and eliminating roaming charges.

5.3 Ofcom’s approach to consumer vulnerability

How it is expressed

Ofcom considers the consumer interest across all parts of its work and seeks to identify and tackle areas where consumers may be vulnerable to harm. Very recently, Ofcom set out its approach more explicitly in an overview of its work on promoting participation and addressing consumer vulnerability (Ofcom 2014a). This approach recognises short and long-term causal factors and the dynamic nature of vulnerability:

‘Some consumers’ ability to participate in communications markets and society is affected by factors such as their age, disability, income or geographical location. Life events such as bereavement or serious illness can temporarily reduce people’s ability to participate in society and/or increase their dependence on certain communications services.

Vulnerability is about consumers’ circumstances, which can change over time. It can have a range of negative consequences:

- *Consumers may suffer financial detriment, for example if they are a victim of mis-selling or are unable to access the best deals.*
- *They may become isolated if they are unable to keep in touch with family and friends.*
- *They may not be able to participate as fully in society as they would wish.’*
(Ofcom 2014a, p 39)

Very recently, Ofcom set out its approach more explicitly in an overview of its work on promoting participation and addressing consumer vulnerability... recognises short and long-term causal factors and the dynamic nature of vulnerability...

In outlining its approach to participation and vulnerability, Ofcom also refers to its specific duties under the Communications Act 2003 to take account of particular groups of citizens and consumers who may be vulnerable to harm.

However, Ofcom then explains that, in regulating in the interests of consumers and citizens, Ofcom needs to have regard to the needs of all consumers in vulnerable circumstances. The example is given that any consumer can be vulnerable to harm temporarily, for example after an accident or in an emergency (Ofcom 2014a).

At the time of writing Ofcom had just published a web page that sets out its approach to and work on consumer vulnerability (see Ofcom website reference May 2014).

As in other sectors, there is a wider question that needs to be addressed about the respective responsibilities of government and of Ofcom...

How the approach has developed

Ofcom's approach to consumer vulnerability has evolved over time, and builds on previous work, for example, on access and inclusion, and affordability. Other contributory factors include concerns about the need to look at who is most at risk and the scale of risk, and the need for greater focus on nations and regions.

Key gaps and areas of concern

Boundaries of responsibility

As in other sectors, there is a wider question that needs to be addressed about the respective responsibilities of government and of Ofcom, particularly in relation to social policy issues such as affordable access to communications services that are regarded as essential.

Expectations of Ofcom

There is a gap between external expectations of Ofcom and what it can actually do, for example, on nuisance calls.

5.4 Putting policies into practice

Strategies and work plans

At the time of writing Ofcom was completing consultation on its Draft Annual Plan 2014/15. This refers to Ofcom's duties to take account of the needs of disabled people, elderly people, people in rural areas and those on low incomes in its policy work, and that it also seeks to understand other aspects of consumer vulnerability.

Under Ofcom's strategic purpose to promote opportunities to participate, the following areas of work are outlined in the draft work plan:

- understand and promote the interests of vulnerable consumers and citizens
- continue to promote the provision of better mobile coverage and service information in order to inform both consumers and policy decisions
- work in collaboration with government and industry to promote the widespread availability of fixed and mobile superfast broadband, and

- complete an evaluation of, and report on, the affordability of core electronic communications services

Specific activities include an evaluation of the affordability of core electronic communications services (see below), as well as further work on relay services to ensure adequate provision of services for consumers with hearing impairments; promotion of better mobile coverage and service information for consumers; and work with government and industry to promote widespread availability of superfast broadband.

The draft work plan for 2014/15 also sets out planned activities under Ofcom's strategic purpose to protect consumers from harm. These include further work on a range of priority areas such as nuisance calls and unexpectedly high bills, as well as supporting industry and government initiatives to improve levels of user trust in internet services.

Activities and interventions

Help for low income consumers

BT's Universal Service Conditions requires it to make available one or more schemes to assist consumers who have difficulty affording telephone services including, in particular, consumers on low incomes or with specific social needs (KCOM has similar requirements in Hull where it is the universal service provider). The scheme currently consists of BT Basic, which offers a low cost home phone service to people on low incomes and those of pension age who are in receipt of specified income-related benefits. It is possible to have broadband (from any provider) and/or a mobile phone (prepay or postpay) alongside BT Basic.

BT Basic includes call allowances for a set cost, up to 15 minutes each month (45 minutes each quarter); it does not include an extra charge for consumers who do not pay by Direct Debit, and neither does it include a charge for paper bills or for Call Display. At least three months' notice must be given to Ofcom by BT of any changes in BT Basic. Ofcom also has powers to issue a Direction in respect of the scheme.

Affordability and essential communications services

Consumers of communications services have benefited from competition, innovation and falling prices over the last decade. Ofcom recognises that the benefits of competition, innovation and falling prices are not automatically guaranteed and that the benefits are not always felt equally by all consumers (Ofcom 2014b).

Affordability may be one of a range of barriers to take-up of those telecoms services that might be regarded as essential, and Ofcom has embarked on a project to learn more about these issues. The aim is to explore views on: 'essential' telecoms services and what they are for the UK population currently, to help Ofcom to define 'essential' services; and the affordability of these 'essential' services, particularly for those for whom it may be an issue (Ofcom 2013).

Ofcom is using a variety of analytical techniques to better understand how to define core services, and whether there may be situations where those are not affordable, according to its draft work plan for 2014/15, including:

- commissioning qualitative and quantitative research;
- gathering information on consumer spending on telecoms;
- reviewing existing information; and
- research into the costs of communications services, consumers' telecoms use, and stakeholders' views.

Affordability and additional charges

Ofcom's scope for intervention on additional charges levied on consumers' communications bills, such as paper bill charges and non-direct debit charges, is limited by its statutory powers and by a Supreme Court judgement.⁵⁶ Ofcom is not able to ban these terms and charges but the regulator expects them to be made clear to consumers and to be fair including, for example, that charges for paper bills are reasonable.

The Payment Surcharges Regulations (PSR) cover non-direct debit charges: if a business charges a residential consumer for using a particular payment method, the charge must do no more than cover the costs incurred by the business in processing the payment.⁵⁷ Ofcom has powers under the Enterprise Act 2002 (Part 8) to ensure that communications providers comply with the requirements of the PSRs to protect the collective interests of consumers (on a forward looking basis).

Ofcom's scope for intervention on additional charges levied on consumers' communications bills, such as paper bill charges and non-direct debit charges, is limited by its statutory powers and by a Supreme Court judgement.

The type of costs that can legitimately be recovered through payment surcharges are not defined in the UK regulations, nor in the European law they implement. The European Commission published guidance on the Consumer Rights Directive in June 2014. At the time of writing, Ofcom was considering its contents in order to decide what action, if any, might be needed.

Although the impact of such charges is likely to be relatively lower for communications services than for other services such as energy, additional charges, for example, to receive a paper bill are likely to affect low income consumers in particular. At the time of writing, Ofcom was carrying out research into different payment methods available to customers.

It is also worth noting the following comments in an earlier Ofcom's Statement on additional charges:

⁵⁶ <http://bit.ly/1rEPP2g>

⁵⁷ The PSRs came into force in the UK on 6 April 2013 and implement Article 19 of the Consumer Rights Directive.

'More generally across the economy, we are aware there are numerous examples of how low income consumers end up paying more for essential products and services. These wider concerns around distributional effects are more an issue for government than Ofcom and our guidance about the Regulations.'

(Ofcom review of additional charges Including non-direct debit charges and early termination charges, p2, Ofcom, 2008)

Debt management: Ofcom is currently working with Money Advice Service (MAS), the Money Advice Trust and Stepchange, and has put these agencies in touch with communications providers (CPs). It is considering running workshops on this topic and these could be cross-sectoral.

Services for disabled people

Ofcom continues to carry out an extensive range of work designed to protect and improve communications services for people with disabilities.

Ofcom has published a good practice guide for providers on people with disabilities and call centres (Ofcom 2010). This resulted from research findings that showed that difficulty dealing with call centres was a common problem, and because of concerns raised with Ofcom by disability organisations. Ofcom also drew attention to the Equality Act 2010 in this regard (which makes it illegal to discriminate grounds of disability in the provision of goods and services, and says that service providers must make reasonable adjustments to enable disabled people to use their services).

Other recent work by Ofcom relating to participation and consumer vulnerability includes:

Pre-paid calling cards: using evidence from external organisations, Ofcom identified that problems with these cards were especially affecting recent immigrants, especially if they lack English skills.

Complaints handling code and guidance: this came into force in January 2011 and includes requirements in respect of disabled consumers, and the guidance makes clear that Ofcom considers that a reasonable escalation process will include procedures for front-line staff to identify and treat appropriately complaints from consumers that are vulnerable in any way.

Fixed line mis-selling: in the guidance which accompanies General Condition 24, Ofcom states that it would be inappropriate for sales representatives to contact and take advantage of vulnerable customers – the examples given are of those who are elderly or whose first language is not English.

In general, complaints data and consumer concerns that emerge from tracking research help Ofcom to identify potential problems, and its enforcement team works closely with its consumer policy team. Ofcom's work is also informed by findings from external organisations such as the Communications Consumer Panel and Which?. For example, Trading Standards in Tower Hamlets contacted Ofcom about problems with international calling cards which resulted in an investigation. Letters to Ofcom from MPs, MSPs, AMs and MLAs can also trigger investigations.

Ofcom's decisions on enforcement work involve looking at the nature of harm involved: what is happening, to whom and the degree of harm, according to our interviews for this research. Factors taken into account include the effects of intervention, particularly any unintended consequences for consumers. Penalties may be used as deterrents, and the general conditions for providers may be used to target remedies. Other remedies can be voluntary such as information remedies.

For example, in the Continental Telecom investigation on mis-selling in 2010, Ofcom found that the communications provider had "failed to protect vulnerable customers". There had been a significant number of complaints received from older and/or vulnerable customers alleging that Continental Telecom had slammed customers (where customers are switched from one provider to another without their consent) prevented them from transferring to other communication providers, together with witness statements from people acting with Power of Attorney for these vulnerable customers. The company also failed to follow the required steps in giving notice before cutting customers off for alleged non-payment of bills (The company was the subject of repeated Ofcom action and was fined the maximum amount allowable; it was subsequently wound up.)

Mobile Security and Consumer Protection Working Group: this is a joint regulators' working group (including Ofcom, the Information Commissioner, PhonePayPlus and the Competition and Markets Authority) with a focus on mobile security and protecting consumer vulnerable to harm. This can be seen as a useful illustration of trying to tackle vulnerability in a dynamic sense, according to Ofcom.

Text relay calls

Ofcom does carry out work from time to time in order to protect the interests of consumers and citizens where it does not have a specific remit. For example, the regulator has published information for the benefit of text relay users in response to complaints from deaf customers that banks and other service providers have refused to accept relay calls. While Ofcom does not regulate banks and cannot therefore instruct them to accept these calls, it has published relevant advice from the Equality and Human Rights Commission and the Information Commissioner.

Other areas of activity

As well as its work on telecoms and broadband services, examples of Ofcom's work relating to vulnerability issues include:

Post: Ofcom carries out work on the universal service obligation to ensure consumers can receive and send mail at a uniform price and standard no matter where they live in the UK and the work to ensure the affordability of postal services.

Internet content: Ofcom's work includes a focus on protecting consumers vulnerable to access to adult material. For example in February 2013, the regulator launched new content on ParentPort – the website set up by the UK's media regulators to make it easier for parents to complain about material they have seen or heard across the media, communications and retail industries.

Spectrum allocation: a significant part of Ofcom's work has been involved in identifying consumers vulnerable to the loss of TV channels as a result of spectrum changes and seeking ways of mitigating any harm. The work on Digital Switchover was one of the early examples of this work.

Broadcasting: through its work on standards, Ofcom aims to secure adequate protection for consumers vulnerable to harmful or offensive material and made vulnerable from unfair treatment or unwarranted infringements of privacy (for example, recent cases include findings that vulnerable viewers could have been exploited by programmes on channels which told them they could cure serious illnesses including cancer with household products such as bicarbonate of soda).

Research and learning

According to our interviews for this work, Ofcom's approach is highly evidence-based: its research feeds into virtually all of its work; and its research staff work closely with consumer policy and consumer protection teams. The research team has its own budget, divided roughly equally between tracking research and ad hoc research. Decisions on research depend on factors such as: whether it fits with annual plan objectives; whether it coheres with Ofcom's fundamental duty regarding consumers and citizens; and the implications of resource constraints.

Ofcom recognises the need to be pro-active in seeking out and identifying areas of consumer vulnerability as well as learning from data from consumer complaints, according to our interviews for this work. The challenge is to ensure the regulator has a sufficient evidence base especially in the absence of consumer complaints on specific topics. Research is therefore critically important. Ofcom acknowledges that there are challenges in identifying consumers in vulnerable circumstances and costs involved and therefore that its research needs to be very creative.

The challenge is to ensure the regulator has a sufficient evidence base especially in the absence of consumer complaints on specific topics.

Ofcom frequently uses qualitative research to identify and understand trends and problems, which can include illustrative case studies. These include a number of surveys on the use by disabled people of communications services (Ofcom 2007; Ofcom 2008; Ofcom 2008a; GfK NOP 2009; and Plum Consulting 2009). Ofcom's latest research covers disabled consumers' ownership of communications services (Ofcom 2013c). The report provides a detailed analysis among people with hearing, visual, mobility and multiple impairments, making comparisons by type of disability and by demographic group (Ofcom 2013c).

The use of communication services by people from ethnic minority backgrounds has also been the subject of Ofcom commissioned research in recent years (Ofcom 2007; and Ofcom 2013d). Other relevant research has included an attitudinal survey among people living on a low income and their experience of communications services (2007).

Research companies assist in finding interviewees in particular vulnerable circumstances. Ofcom also has ad hoc links with a number of voluntary organisations. For example, Ofcom has recently placed ads on charities' websites to invite people to take part in interviews regarding text relay services; similarly emails have been sent to social services departments on this topic.

From time to time, Ofcom uses mystery shopping exercises to test providers' practices and behaviour; this can involve actual customers or people contacting companies as friends/relatives enquiring about access to specific services. For instance, a few years ago, Ofcom carried out some mystery shopping on the extent to which providers' services meet their statutory requirements to promote services for disabled people. This type of exercise can be challenging to do but it can be very informative.

Ofcom is planning to look again at the quality of information on providers' websites on services for disabled consumers and on advice given to consumers on low/variable incomes when seeking to purchase a phone. They will present the providers with these findings and may publish comparative information.

Ofcom has a statutory duty to promote media literacy, and it has been running large scale tracking research with adults and children for a number of years, now including three-to-four-year-olds (this is the only annual tracker remaining of this kind). In addition, its 'Media Lives' project has been following the same 15 people since 2005 through annual videotaped two hour interviews; this provides qualitative insight into people's changes in use of communications and changing circumstances. Issues arising are frequently followed up in quantitative research. Participants cover a range of socio-economic and ethnic minority backgrounds and age groups. The findings are presented internally and the policy team makes use of the material to inform their work. Issues highlighted through this research include: difficulties in understanding individual data requirements and provision; impact of nuisance calls; and declining use of landlines. A summary written report is published annually (the video recordings are confidential).

As well as consumer research, Ofcom has an ongoing programme monitoring consumer complaints data. Although Ofcom does not have a remit to investigate individual consumer complaints, calls from consumers who are vulnerable are sometimes escalated to communications providers by Ofcom's contact centre at the discretion of call takers and managers.

Postal service: Ofcom has carried out research on affordability and universal service: although post takes up a very low proportion of income for most people, Ofcom noted that affordability particularly affects recent immigrants, often on a low income, who rely on postal services.

Influencing policy

Ofcom is involved in assisting public policy, for example, through its work with Government to promote widespread availability of superfast broadband and investment in mobile networks, and in undertaking research to underpin emerging public policy. One of Ofcom's stated key strategic purposes is to provide information and high quality research to understand levels of participation in communications services across the UK and its nations, supporting the identification of opportunities for further participation. It seeks to do so by publishing research and through collaboration with government, NGOs and industry to promote participation and by publishing a range of reports, including the Consumer Experience and media literacy research. (Ofcom Annual Plan 2013/14; and Department of Culture, Media and Sport 2013)

Moreover, although this is broader than the scope of this research, it is worth noting that Ofcom anticipates that its working relationship with the government will continue to be fluid, ranging from supporting to implementing specific policies as defined by Parliament. But it is for the government to decide how far regulatory policy should and could be used in support of wider government growth and innovation goals, according to Ofcom (Ofcom Annual Report 2013/14).

... it is for the government to decide how far regulatory policy should and could be used in support of wider government growth and innovation goals, according to Ofcom.

5.5 Organisational culture and accountability

The Consumer Interest Toolkit plays a major part in how Ofcom operates. It was developed by the Communications Consumer Panel and adopted by Ofcom, which agreed to be bound by it and judged against it (Communications Consumer Panel and Ofcom 2006). The Toolkit contains several references to vulnerable consumers, and it also states that markets may work to people's disadvantage for reasons that do not stem from their ability to have access to a particular good or service at a reasonable price. To define the consumer interest in line with the Toolkit, Ofcom must take account of the fact that consumer needs vary widely both between different consumers and at different times.

The Toolkit is very much embedded in work throughout Ofcom and in its culture, according to our interviews for this project. Project teams are expected to monitor and report on outcomes for consumers and, for each Ofcom policy project, a detailed assessment of consumer harm is undertaken. This includes current harm that the project seeks to rectify and also potential future harm, either as a consequence of the proposed policy change or as a result of not making the change.

Ofcom has set up a Participation and Vulnerability Co-ordination Group which meets quarterly and includes representatives from across Ofcom and from teams working on projects with a particular bearing for consumers in vulnerable circumstances. The Group has an explicit role in holding the organisation to account; again the Toolkit is very important in this respect. Organisational learning is also informed by internal presentations on research findings and work updates.

There are a number of checks within Ofcom to ensure that the interests of consumers, including people in vulnerable circumstances, are properly considered in each project. This includes its Committee structure especially the Policy Executive and the Consumer, Content and External Affairs Steering Group, who will challenge staff on effects for people in vulnerable circumstances. The Group Director of Ofcom's Content Consumer and External Affairs Group has lead responsibility for consumers' interests including consumer vulnerability.

Overall, Ofcom's governance processes are designed to help identify and express harm or potential harm to vulnerable consumers, with templates for committee papers asking project managers to set out this clearly for the decision makers.

The Communications Consumer Panel can audit Ofcom compliance with the Consumer Interest Toolkit without notice (information on compliance has been published⁵⁸) and in general the Panel acts as a critical friend and provides another source of challenge. The impact of policies are tracked and reported on in Ofcom's Annual Reports.

Ofcom participates in and currently hosts the Consumer Forum for Communications, in order to expand its stakeholder contacts, particularly with some groups that are under-resourced. The Forum operates independently of Ofcom, is independently chaired, and has its own website, presently hosted on Ofcom's site. Input from consumer stakeholders usefully augments information received from market research, according to Ofcom.

⁵⁸ <http://bit.ly/1pS4PdY>

5.6 Key lessons and challenges

A crucial test of Ofcom's approach to consumer vulnerability will be how the regulator reacts to the results of its research on the affordability of communications services and what services are considered essential. If the findings show that there are significant problems for some consumers regarding affordability and access to services that are seen as essential, Ofcom will need to take effective action to tackle the causes where the regulator has powers to do so. Where Ofcom's powers are limited, the regulator should highlight areas of concern that need to be addressed by other relevant parties, notably government and industry.

It is welcome that Ofcom has set out its approach to participation and vulnerability. A key challenge will be to ensure that this is embedded across the regulator's policy processes and work, and that this approach is understood and put into practice by communications providers.

Although the impact of additional charges is likely to be lower in communications services than in other services such as energy, such charges are likely to affect low income consumers in particular.

Ofcom's statutory powers to intervene are limited but it has powers regarding whether such charges are cost reflective and it remains to be seen what monitoring and action it will take to ensure that this is the case.

A key challenge will be to ensure that this is embedded across the regulator's policy processes and work, and that this approach is understood and put into practice by communications providers.

Ofcom references

Communications Consumer Panel and Ofcom, *Capturing the consumer interest: A toolkit for regulators and government* (2006)

Communications Consumer Panel, *Communications Consumer Panel response to futuresight presentation to Ofcom, Affordability of Essential Telecoms Services, interim report, draft vs2*, November 2013 (confidential)

Department of Culture, Media and Sport, *Connectivity, Content and Consumers Britain's digital platform for growth* (2013)

George and Lennard Associates, *Consumer vulnerability and disadvantage: Organisational approaches - report for Consumer Focus*, internal paper (2010)

George and Lennard Associates, *The poverty premium and cost reflectivity*, Consumer Focus internal paper (2012)

GfK NOP, *Experience of people with upper-body mobility and dexterity impairments in the communications market*, Ofcom (2009)

Ofcom, *People with hearing impairments and communications services* (2007)

Ofcom, *People with visual impairments and communications services* (2008a)

Ofcom, *People with learning disabilities and communications services* (2008b)

Ofcom, *Access and Inclusion Digital communications for all* (2009)

Ofcom, *Disabled customers and call centres* (2010)

Ofcom, *Affordability of essential telecoms services: Research Brief Appendix One Specification of Requirements*, confidential (2013)

Ofcom, *Annual Plan 2014/15 Invitation to Comment Consultation* (2013a)

Ofcom's consultation: *Improving access to electronic communications services for disabled people* (2013b)

Ofcom, *Disabled consumers' ownership of communications services* (Ofcom 2013c)

Ofcom, *Ethnic Minority groups and Communication Services* (Ofcom 2013d)

Ofcom, *The Consumer Experience of 2013 Telecoms, internet, digital broadcasting and post* (2014a)

Ofcom (2014b) *Cost and value of communications services in the UK*

Ofcom, *The Ofcom Approved Code of Practice for Complaints Handling* (2011)

Ofcom, *Guidance Notes to the Ofcom Approved Code of Practice for Complaints Handling* (2011)

Ofcom website:

<http://consumers.ofcom.org.uk/2013/11/ofcom-proposes-to-approve-first-improved-%E2%80%98text-relay%E2%80%99-service/>, accessed 3.12.13

Ofcom website reference on additional charges:

<http://stakeholders.ofcom.org.uk/consultations/addcharges/faq>

Ofcom website: <http://consumers.ofcom.org.uk/2014/05/consumer-vulnerability/>; accessed 19 May 2014

Plum Consulting, *Voice telephony services for deaf people*, Ofcom (2009)

6. Financial Conduct Authority (FCA)

6.1 Introduction

The FCA was set up by the Financial Services Act 2012 which created both it and the Prudential Regulation Authority, essentially dividing up work which had previously been done by the FSA and bringing further powers and duties within the remit of the two new regulators. The FCA supervises the conduct of 26,000 retail and wholesale financial firms and regulates the prudential standards of 23,000 of those. It regulates financial advisers as well as product providers. The FCA's new responsibility for competition is a significant shift in its remit. On 1 April 2014 the FCA took over responsibility for the consumer credit industry from the Office of Fair Trading (OFT) – this includes hire purchase companies, credit card issuers, payday loan companies, pawnbrokers, debt management and collection firms and providers of debt advice.

The industry that the FCA supervises is very different from the other three regulators examined in this report. Historically, financial services have always been marketed by private sector providers, operating in a competitive market. The products are generally much more complex than utility services and are often forward looking, offering some future return for a present investment. Regulation in this area has never been concerned with price control but has focused instead on the fairness of the marketing and administration of the products. This also seems to reflect a view that financial services are not essential services in the same way as water and energy, although it is difficult to participate fully in society without access to certain financial services, for example, in relation to banking and money transmission.

Financial services firms have never been under an obligation to supply their services to those who request them unlike, for example, energy and water companies. Issues of access such as access to free cash machines, are for government rather than the regulator, and there is clarity within the regulator over where this line lies. An illustration of the boundaries lies in the provision of basic bank accounts, where the government encouraged industry to provide them, however FCA has an interest in the conduct aspect of whether banks are implementing the rules around identity requirements in the correct way.

The FCA has recently created a work stream to address the needs of consumers in vulnerable circumstances. The outcome being pursued is one in which all financial services firms create and *put into practice* appropriate strategies to address the needs of consumers in vulnerable circumstances.

The industry that the FCA supervises is very different from the other three regulators examined in this report. Historically, financial services have always been marketed by private sector providers, operating in a competitive market.

... seems to reflect a view that financial services are not essential services in the same way as water and energy...

In terms of the challenges facing the FCA and its approach to vulnerability, the current most obvious areas of difficulty are financial products that do not meet consumer needs (because they are inflexible or one-size-fits-all); and the gap between policy and practice within firms. In *Journey to the FCA* the first of three outcomes that will be required to fulfil the new regulator's vision is that "consumers get financial services and products that meet their needs, from firms they can trust" (Financial Services Authority (FSA) 2012: 7).

If the FCA can bring about real change ... it could mean a significant change for many consumers in vulnerable circumstances.

If the FCA can bring about real change in this aspect of financial services, it could mean a significant change for many consumers in vulnerable circumstances.

Much of the FCA's work is to do with regulating wholesale markets. For the purposes of this study we concentrated on their role within retail consumer markets, and examined their approach across all product areas as the developing consumer vulnerability strategy is not differentiated by different products.

6.2 Powers and approaches to consumer vulnerability

Legal framework

The FCA's strategic objective is to ensure that financial markets work well.⁵⁹ Underneath the strategic objective are three operational objectives: consumer protection, integrity and competition. The consumer protection objective is to ensure an appropriate degree of protection for consumers while having regard to a number of matters. These matters include: the differing degrees of experience and expertise that consumers have, the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose, the general principle that consumers should take responsibility for their decisions, the differing expectations that consumers may have in relation to different kinds of investment or other transactions and any information provided to the FCA by the consumer financial education body and the Financial Ombudsman Service. Under this principle the FCA must also consider the level of risk that is involved in any consumer transaction and the capabilities of the consumers in question.

The FCA's strategic objective is to ensure that financial markets work well. Underneath the strategic objective are three operational objectives: consumer protection, integrity and competition.

The integrity objective is aimed at promoting the integrity of the UK financial system which means a focus on its soundness, stability and resilience, ensuring that financial crime does not take place, preventing market abuse, ensuring the orderly operation of financial markets and the transparency of price formation.⁶⁰

⁵⁹ Financial Services and Markets Act 2000 s. 1B(2).

⁶⁰ *Ibid* s. 1D.

The competition objective is to promote effective competition in the interests of consumers.⁶¹ When considering whether or not competition is effective there are a number of matters which the FCA must have regard to, including: the needs of different consumers who use or may use financial services, including their need for information that enables them to make informed choices; the ease of access of consumers to financial services, including consumers in areas affected by social and economic deprivation and the ease with which consumers who obtain financial services can change the person from whom they obtain them.

The FCA may also have regard to the ease with which consumers who may wish to use financial services, including consumers in areas affected by social or economic deprivation, can access them. What this means in practice, and potential overlap with vulnerability issues, is still being developed internally.⁶²

Although there is no power for a Minister or government to give guidance to the FCA, it operates within a complicated regulatory context and there are provisions which oblige it to ensure that it co-ordinates its functions with those of the Prudential Regulation Authority, expressed in a memorandum of understanding, and to co-operate with the Bank of England in connection with the financial stability objective of the Bank.⁶³ The Prudential Regulation Authority also has a reserve power to stop the FCA exercising any regulatory or insolvency powers if it feels that the exercise of these powers will damage the financial stability of the UK.⁶⁴ Although these provisions are not directly relevant to the treatment of consumers in vulnerable circumstances, it is worth noting that such decisions may have wider implications.

In addition the FCA also has responsibilities towards the Money Advice Service, which has the role of enhancing the public's understanding of financial matters. Although the Money Advice Service operates independently, the FCA is responsible for the appointment and removal of the board, approving the annual budget and business plan and monitoring the operation of the Money Advice Service. There is also an agreement between the two organisations that they will meet and communicate regularly.⁶⁵ Similar arrangements are in place to govern its relationships with the Financial Ombudsman Service and the Financial Services Compensation Scheme.

The FCA must also appoint a Consumer Panel which it is required to consult and also to take into account representations made by it.⁶⁶

⁶¹ Ibid s. 1E.

⁶² Ibid s. 1E.

⁶³ Ibid ss. 3D, 3E and 3Q.

⁶⁴ Ibid s. 3I.

⁶⁵ Ibid s. 3S and Schedule 1A. See also 'Money Advice Service, Financial Conduct Authority and HM Treasury Framework Document' (2013).

⁶⁶ Financial Services and Markets Act ss. 1M, 1Q and 1R.

The FCA also has responsibility under the Enterprise Act 2002 for enforcing certain consumer law requirements.

The FCA's general duties and objectives are translated into very detailed rules, set out in its handbook, which govern the conduct of business of firms regulated by it. The handbook starts with high level principles for business of which the most relevant is Principle 6: "Customers' interests: A firm must pay due regard to the interests of its customers and treat them fairly".

Included in the Conduct of Business rules are obligations that the investment advice must be suitable for the client, bearing in mind their knowledge, financial situation and investment objectives, or appropriate, which involves a judgement on the client's ability to understand the risks involved in the various investments.⁶⁷ There are also rules on how firms conduct research and how information is presented to consumers; and there are specific rules relating to the treatment of insurance, mortgage and banking customers.

In the wake of large-scale mis-selling scandals, the FCA is aware that problems have arisen in the past when inappropriate products were widely sold. The regulator wants firms to do more by way of stress-testing and pre-approval work to ensure that products only reach a suitable target market. The FCA has product intervention rules to prevent harm to consumers – for example, by restricting the use of specified product features or the promotion of particular product types to some or all consumers. The regulator can also act to ban products that pose unacceptable risks, and to ban misleading promotional material. For example the regulator acted to stop firms marketing, recommending or selling traded life policy investments to the mass retail market, as it believed they were high-risk and unsuitable.

6.3 Policy approach to consumer vulnerability

The FCA has a developed work stream to address the needs of consumers in vulnerable circumstances with a desired outcome in which all financial services firms create and *put into practice* appropriate strategies to address the needs of consumers in vulnerable circumstances.

A number of recent developments seem to be driving this new impetus:

As the FCA was created, much was made of putting the consumer at the heart of its work. Clearly the split of the FSA into a prudential and a conduct regulator gave the conduct side more space to focus on the end consumer. The fact that it happened to coincide with the mis-selling scandals gave the conduct side added urgency to develop its consumer focus.

⁶⁷ Conduct of Business Rules 9.2 and 10.2.

- *“It is important to understand what’s going to be at the heart of the FCA, and that is getting a fair deal for consumers”* (Wheatley 2012). The aim is to move from a compliance-based approach to a more judgement-led approach, which will enable the FCA to be more proactive. This relies on the regulator having good quality information about what’s happening in the market in order to identify emerging risks. In *Journey to the FCA* the new approach is summarised as follows:

“Our new Policy, Risk and Research Division will act as the radar of our new organisation. It will combine research into what is happening in the market and to consumers with better analysis of the type of risks and where they appear. This will then drive the actions that we take across the organisation.” (FSA 2012: 41)

- Thematic reviews of markets (which take a holistic approach), smarter identification of risk, and early intervention are all part of this. Under the new FCA structure, a *Consumer and Market Intelligence* (CMI) department was created within the Policy, Risk and Research division, which brings together consumer insight in the form of market research, market intelligence and engagement with external consumer representative groups. The FCA told us that this department has been tasked with developing a consumer strategy, and is now being consulted more widely by other departments in the organisation which indicates that an interest in the consumer viewpoint is spreading. In addition, the CMI department is where their consumer vulnerability workstream has been created and where it continues to be led.
- A feature of the new body is that under its new competition objective, the FCA may have regard to the ease with which consumers can access services, including those from *economically or socially deprived* areas. Although access to products is not the only issue in consumer detriment, this objective (which came in at a late stage as an amendment to the Financial Services Act 2012) was nevertheless seen as a step forward by consumer organisations in establishing the essential nature of financial services, and recognising that some consumers are particularly disadvantaged. Work is now going on at the FCA to determine how to pursue this area, and although it overlaps with work around vulnerability the FCA is clear to differentiate between social policy issues (which are firmly outside its remit) and issues related to access which it does have powers to address, for example by using its new competition powers where markets for vulnerable consumers may not be working well due to competition issues.
- Last but not least, the fact that the FCA took over the regulation of consumer credit from the OFT in April 2014 will increase the pressure on the regulator to sharpen its focus on vulnerability, given the risk of consumer detriment in this area, although the issue may arise in other areas as well.

“It is important to understand what’s going to be at the heart of the FCA, and that is getting a fair deal for consumers”

... the fact that the FCA took over the regulation of consumer credit from the OFT in April 2014 will increase the pressure on the regulator to sharpen its focus on vulnerability...

Key gaps and areas of concern

The FCA has faced three challenges:

- winning traction for the vulnerability strategy internally in an organisation which it admits has not previously focused on consumers in vulnerable circumstances
- the fact that it needs to not stray onto issues of social policy which remain the preserve of government
- influencing the behaviour of the firms it regulates.

Historically, some argue the attitude has been that of “buyer beware”, that consumers must take steps to protect themselves, and that the provision of information and education form the boundary of the regulator’s role in this area (Financial Services Consumer Panel 2012c, Consumer Focus 2011).

The FSA, did not have a strategy around consumer vulnerability. Historically, the financial regulator’s approach to consumer protection at least partially centred on the belief that increasing financial capability would improve protection for consumers. The first national strategy for financial capability was led by FSA and covered 2006-11. It was informed by a baseline survey of financial capability in 2006 (FSA 2006a and 2006b). This defined five domains of capability:

- Managing money
- Keeping track of finances
- Planning ahead
- Choosing products
- Staying informed

It had a seven-point delivery programme covering:

- Targeting schools
- Young adults
- People in the workplace
- New parents
- Improving impartial money advice
- Consumer communications
- Online tools

Also within this programme was a Partnerships programme which concentrated on working with “trusted intermediaries” to embed financial capability into the work of mostly Third Sector organisations. Partners included Mind, Mencap, Citizens Advice, National Housing Federation, Gingerbread, Macmillan Cancer Support, Royal College of Psychiatrists, Transact, NACRO and the National Offender Management Service.

Historically, the financial regulator’s approach to consumer protection at least partially centred on the belief that increasing financial capability would improve protection for consumers.

Further research demonstrated the impact of significant life events on capability, and identified correlations between aspects of financial incapability and life stages or specific circumstances – for example the over-70s tend to be less capable at making ends meet and less capable in the area of choosing financial products.

The FSA's work on financial capability was highly regarded by many:

“the 2008 Thoresen review of generic financial advice described the FSA as a “world leader in financial capability”; and the NAO found “In providing leadership and coordination, the FSA has played a major role in placing financial capability on the agenda of government and the financial services industry.” Both Thoresen and the NAO commended the FSA’s partnership working in delivering this programme (Consumer Focus 2009: 27)”

However the National Audit Office (NAO) (2007) review was critical of the FSA's ability to measure improvements and effectiveness of its strategy. Some stakeholders commented that the strategy should have made older people a priority area, and that it should have focused more on disadvantaged groups (NAO 2007, para 5.12).

... the National Audit Office (NAO) (2007) review was critical of the FSA's ability to measure improvements and effectiveness of its strategy.

The then Government set out its position on financial capability in 2007 with *Financial Capability: the Government's long term approach*. This identified a gap in the market for generic advice which led to the Thoresen Review (HM Treasury 2008) which reported in 2008 and concluded that there was a need for a national service and this led to creation of the Money Advice Service (MAS) in 2010 – a multi-channel service for preventative money advice and removed direct responsibility for this policy from the regulator. The pathfinder test programme identified that targeting people facing key life events resulted in successful interventions. The Money Advice Service is now developing a UK strategy for financial capability for 2014-18, so this is no longer the FCA's responsibility, although the FCA has an oversight role.⁶⁸

Perhaps the two pieces of work by the FSA which have had, or will have, most impact on consumers are the Treating Customers Fairly initiative, which has been in place for a number of years, and the Retail Distribution Review which took effect at the start of 2013. Both are aimed at better outcomes for consumers. However neither focuses specifically on consumers in vulnerable circumstances.

The Retail Distribution Review aims to provide better information for customers, raise the professional standards for advisers and ensure that remuneration arrangements do not distort the advice given. Although this may have some effect on consumers in vulnerable circumstances, this has not been its major thrust.

⁶⁸ The MAS has been criticised by the Treasury Select Committee as “not fit for purpose” see: Treasury Committee ‘Money Advice Service’ HC 457 2013-14.

The FSA's Treating Customers Fairly (TCF) initiative includes a range of desired outcomes around suitability, clear information, products that meet expectations, and no post-sale barriers. It has been praised as "an example of a principles-based approach to regulation, ... an innovative attempt to promote culture change among firms" (Consumer Focus 2009: 26). However given that TCF has been in place for a number of years, and has not prevented various widespread mis-selling or unsuitable products, its effectiveness in practice must be open to question.

Thus it can be seen that the work the FCA is doing on consumer vulnerability represents a new and innovative approach for a financial services regulator which will require policies to be developed and embedded across the organisation. There is then the further challenge of getting the industry to take on board the new approach.

... the FCA is doing on consumer vulnerability represents a new and innovative approach for a financial services regulator which will require policies to be developed and embedded across the organisation.

6.4 Putting policies into practice

Strategies and work plans

The FCA now has a consumer vulnerability work stream, and has developed a programme of work with a defined outcome. For this work it has a working definition for consumers in vulnerable circumstances which reflects its role in the market as a regulator:

"A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to financial detriment, particularly when a firm is not acting with appropriate levels of care." (Coppack 2013: 3)⁶⁹

However, it has become apparent that to ensure it will be able to gain traction for this piece of work with all stakeholders – internally and externally – the most practical way is to adopt an outcomes-based approach because this is more readily understood by all audiences. The FCA is engaged in a major piece of qualitative research on vulnerability which should be published in Quarter 1 2015, alongside an Occasional Paper.

As this work has developed, the message has begun to be made more public. Christopher Woolard said in a speech that "the FCA, in conjunction with consumer groups, firms and trade bodies, is starting to work to encourage a more consistent and best practice approach towards vulnerable consumers in the financial services market"⁷⁰. This approach recognises that potential vulnerability is related to characteristics, personal circumstances and the behaviour of the market towards consumers, and that these can overlap, vary widely and change quickly. The FCA made it very clear that agreeing a precise definition was less important than looking at outcomes and establishing what "good" looks like for consumers.

⁶⁹ See also <http://bit.ly/1pS5fkh>

⁷⁰ Speech by Christopher Woolard, Director of Policy, Risk and Research at FCA to Tax Incentivised Savings Association Annual Conference (13 November 2013)

They were concerned that having lists of potentially vulnerable groups was too prescriptive and they would rather concentrate on desirable outcomes rather than spend too much time trying to agree definitions. Having the ability to analyse some aspects of vulnerability within the FCA's quantitative consumer research programme and the creation of a consumer segmentation model are aimed at improving FCA's understanding, giving early insights into emerging risks, and facilitating more sophisticated interventions.

The FCA's CMI team carried out an internal desk-based mapping exercise which identified different types of risk for various potential vulnerability factors at an early stage of their existence. These include age, long term illness, disability, mental health, low basic skills, low income, sudden change in responsibility and having caring responsibilities. This research formed the starting point of the current work stream. Market situations throughout the product lifecycle from promotion and marketing through access and point of sale and use of product to exiting or changing product which may cause difficulties are also identified. On the basis of this, the FCA is working on a major piece of qualitative research which will lead to an "occasional paper" on consumer vulnerability (as mentioned above). This paper will explore the concept of vulnerability in financial services, gather evidence of existing practice and detriment in the market and position what good looks like.

Activities and interventions

Approach to risk and detriment

In the past the FSA was criticised for limiting its regulatory interventions to situations where the overall detriment was high, regardless of the impact on individual consumers. Over the years the FSA was criticised for not intervening early enough to prevent large-scale detriment. The FSA failed to prevent mass mis-selling of products such as mortgage endowments and payment protection insurance, card payment protection and packaged bank accounts now under investigation. Eventually the regulator did act and require the firms to make large overall compensation payments to customers. This process was not, however, straightforward as for some firms there were protracted delays in dealing with the issue which added to customer frustration. The FCA's change of approach to risk tolerance could put more focus on small individual losses by large groups of consumers, and therefore see the regulator intervene more frequently.

The Financial Services Consumer Panel commented in *Journey to FCA* (2012: 5) that the regulator needs to be sensitive enough to take account of proportionate impact on some consumers of low-ticket detriment.

The FCA seems to be shifting its approach. In particular a new analysis of risk might involve a greater analysis of why some consumers are more vulnerable to some risks, and an understanding of the risks involved in not having financial products at all.

The FCA seems to be shifting its approach. In particular a new analysis of risk might involve a greater analysis of why some consumers are more vulnerable to some risks, and an understanding of the risks involved in not having financial products at all.

A number of FCA documents set out its approach to identifying detriment and assessing risk. The CMI department does its own work to identify risk based on market intelligence, market research and engagement with consumer organisations, and is able to flag these risks up within the FCA. They are increasingly trying to identify risks for different types of consumer.

In addition, FCA staff complete an Equality Impact Assessment in relation to any proposal to create or change an FCA policy, process or function. This entails a consideration of the impact of any policy changes on Protected Characteristic Groups (as defined by the Equality Act 2010).

There are substantial overlaps between some Protected Characteristic Groups (for example the elderly, disabled) and some consumers in vulnerable circumstances. The Equality Impact Assessment (EIA) is a tool aimed at improving the quality of services by ensuring that individuals and teams think carefully about the likely impact of their work on different equality groups. It involves anticipating the consequences of the FCA's policies, strategies, services and functions on different groups and making sure that any negative consequences are eliminated or minimised and opportunities for promoting equality and diversity are maximised.

In a recent report on its approach to identifying regulatory failure, the FCA (2013a) talked about segmenting consumers in an attempt to differentiate the impact of failure. This specifically mentions vulnerability:

“The FCA is currently developing a segmentation model of individual retail consumers which will set out the characteristics of consumers relevant to the financial markets in which they are active. We will use this to help inform and prioritise regulatory activity in order to prevent detriment to those with lower levels of financial resources and capability or greater vulnerability, or where the level of potential detriment is highest in relation to their financial resources.”

The three factors listed as indicators of failure under the consumer protection objective are the amount of detriment (either in total or per consumer); the number of consumers who have suffered; and the characteristics of those consumers. This indicates a recognition that detriment varies depending on consumer characteristics, and could link to the development of a vulnerability strategy.

The FCA's *Risk Outlook 2013* (FCA 2013b) identifies two types of risk – detriment arising from mis-selling/misconduct, but also “the detriment to society of people not being able to get access to the right products” (FCA 2013b: 6). This also stresses the FCA's stated desire to be more proactive and to intervene at an early stage, “focusing on the sources of detriment such as product design, governance and incentives” (FCA 2013b: 6).

The importance of understanding and responding to consumer needs is highlighted. A number of key priority risks are identified for 2013-14 and some of these touch on issues related to consumers in vulnerable circumstances (e.g. around products that do not meet consumer needs; and spread of technological developments):

“Products and services that are not designed in response to real consumer needs may be unnecessarily complex or lead to excessive prices for consumers or reduced access to financial services.” (FCA 2013b: 53)

and

“The transition to online or mobile options may prevent certain consumer groups from accessing products they need, e.g. firms may not be adequately considering the needs of different consumer groups in developing and marketing mobile banking and payment services which could lead to unfair treatment of consumers.” (FCA 2013b: 55)

However, there is no specific mention of consumers in vulnerable circumstances.

The FCA is under an obligation to secure “an appropriate degree of protection for consumers” and acknowledges that taking a risk-based and proportionate approach to this involves striking a balance, and that this balance might be different in relation to different consumers as well as regulated activities and authorised persons (FCA 2013c: 11). However, in this document there is no further discussion of how this will be achieved and no reference to consumers in vulnerable circumstances. It is also made clear that the new duty to promote effective competition means that the FCA will look to pro-competitive measures in carrying out its consumer protection objective.

Working with regulated companies

One message that came across very strongly during interviews with FCA staff was the gap between companies’ policies and their practices. The example was provided of people struggling to get Power of Attorney recognised when visiting a bank branch. Although the bank may have a policy in place, front line staff dealing with this may be unaware of the policy or simply not trained in how to carry out activities related to it. This can cause significant barriers for consumers. It was also acknowledged that although many of the big companies have internal people with responsibility for vulnerability issues, these may not be understood or spread more widely throughout the company.

One message that came across very strongly during interviews with FCA staff was the gap between companies’ policies and their practices.

There appears to be a push to encourage financial services firms to develop strategies for addressing the needs of consumers in vulnerable circumstances, and recognising that “certain financial services products can be considered ‘essential’, without which it is difficult to have a decent quality of life”.⁷¹ It is also recognised as important that it may be more cost-effective for firms to look at vulnerability more generally through, for example, inclusive design, rather than in a reactive manner. There is evidence that the FCA’s work is beginning to have an effect. For example, one bank has created a vulnerability team, while another has discussed how to do this with the FCA. There have also been presentations on this issue to trade associations, such as the British Banking Association and the Council of Mortgage Lenders with the aim of influencing their members.

... one bank has created a vulnerability team, while another has discussed how to do this with the FCA.

Embedding the vulnerability work stream across the FCA

The key relationship between the regulator and firms it regulates is the supervisor who assesses various aspects of compliance during supervisory visits. In order for issues around vulnerability to be addressed, these would need to be added to the supervisor’s toolkit. This has necessitated working to understand the day-to-day activities of supervisors for whom this area might not have been previously concentrated upon although the supervisors have engaged positively with this work. This has been a key area to be addressed by the FCA as part of its vulnerability workstream and the signs are encouraging. The FCA is developing a suite of tools to assist supervisors ask the right questions of firms in this area, starting in the banking sector. These range from training and guidance documents, e.g., e-learning modules, to specialist support when required. The Vulnerability Leads within CMI are working to embed a consideration of Vulnerable Customers across the FCA, and are engaging with colleagues in Authorisations, Enforcement, Supervision, and Learning and Development to deliver this.

In addition, the FCA has intervened in the credit market to increase protection from rogue practices by limiting to two the number of times a payday loan can be rolled over, or that a continuous payment authority can be used to seek a repayment. They have also insisted that firms tell consumers how to access free debt advice.

Following a market study into add-ons in the general insurance market, the FCA is proposing to intervene to protect consumers from sales practices that may end up with them buying an add-on insurance that they do not need, are unaware that they have purchased, or are not eligible to claim on. This includes banning pre-ticked boxes, and requiring more transparency from firms on claims ratios (in other words if very few customers make a claim for a particular insurance product, or very few claims are successful, this should ring alarm bells).

⁷¹ Speech by Christopher Woolard, Director of Policy, Risk and Research at FCA to Tax Incentivised Savings Association Annual Conference (13 November 2013)

Following a review of mortgage lenders' arrears management and forbearance practices, and concerns about the risks to borrowers from potential interest rate rises, the FCA has identified areas where firms can strengthen their practices so they are well placed to consistently treat customers in financial difficulty fairly. Some firms have been specifically asked to improve their practices. The FCA wants firms to proactively identify customers who may be at risk and treat them fairly based on their individual circumstances.

Research and learning

The FSA was criticised for not having an ongoing programme of consumer research that focused on consumer vulnerability along the lines of other regulators (Consumer Focus 2009, 12). Segmentation by age was the most widely used approach to look at different consumer types within FSA/FCA published research until 2014.

In 2012 the FSA used a more detailed form of segmentation in an annual Consumer Awareness Survey, which segmented consumers into 13 groups based around life stage and income, some of which touched on areas of vulnerability (e.g. "on the breadline; elderly deprivation") but without specifically focusing on consumers in vulnerable circumstances. The FSA used Experian Financial Strategy Segments (FSS)² in an effort to better understand consumers of financial products. This classification provides a segmentation of household groups based on financial product consumption, behaviours and attitudes. In other pieces of research age tended to be the key characteristic for analysis, with product ownership, income levels and financial capability also appearing when relevant (for example, FCA 2013d).

During interviews the FCA commented that in the past limitations on time and resources have resulted in market research that concentrated on the "big picture" of a consumer market and does not focus on particular consumer segments. The "consumer spotlight" segmentation tool that the FCA has recently developed will mean that it is more feasible to focus on individual segments in future, and there is a desire to be more strategic in the research that is conducted. The FCA consumer research team do find consumers in vulnerable circumstances for their research but it does have to spend a little longer and put more effort into this, often using its strong relationships with consumer organisations. This work tends to be qualitative rather than quantitative.

The FCA has recently published research in relation to consumer credit and vulnerable consumers (FCA 2014). The FCA has begun a large scale piece of qualitative research on consumers in vulnerable circumstances which will include interviews with consumers, focus groups and discussions with relevant organisations. It aims to draw out the subtleties of real consumers' experiences of their interactions with the market. This will provide a robust evidence base to supplement existing third-party-provided information and anecdotal reports of detriment. It will be used to inform the FCA's view of expected market responses and forms an essential background to the proposed "occasional paper" which should appear early in 2015

Behavioural economics

As part of pursuing its objectives to protect consumers and promote effective competition, which the regulator states it wants to be around price and quality, the FCA is aiming to extend its understanding of consumer behaviour and decision-making. This is particularly challenging given the complexity of financial services. As part of this the FCA recently published an Occasional Paper on applying behavioural economics in financial regulation. This was completed by staff within the Chief Economist's Department which sits within Policy Risk and Research (alongside CMI). The aim is that an understanding of consumer behaviour will feed into the regulatory analysis of markets:

"I [Martin Wheatley] believe that using insights from behavioural economics, together with more traditional analysis of competition and market failures, can help the FCA assess problems in financial markets better, choose more appropriate remedies and be a more effective regulator as a result." (FCA 2013e)

The paper does not attempt to segment consumers or analyse particular groups. Indeed in an interview one of the authors commented that during the literature review for the paper they came across very few conclusive findings at this level of detailed segmentation, and there was insufficient evidence to determine whether they were context-dependent. For some financial markets, existing research indicates that certain consumer characteristics may increase risk of poor consumer outcomes (e.g. low levels of literacy and numeracy and inexperience may increase some risks, experience/age can be associated with better financial decision-making but the risk of certain errors starts to increase with age again for the elderly and so on). However, further research is needed to establish how the generality of these findings, and broader effects of consumer characteristics affects financial decisions and vulnerability.

In terms of how this work is being taken forward, it is now taken into account in the department's analysis of markets and consequent identification of risk and detriment. An understanding of behavioural economics informs the FCA's general analysis and can be used to flag areas or products which may pose particular risks. Behavioural insights are also considered as part of design and impact assessment of policy remedies where relevant. Behavioural economics is also used as an input into Market Studies that the FCA undertakes, by providing a much richer picture of consumers make decisions and therefore helping the FCA to assess competition in markets better. For example, the FCA undertook research into how consumers purchase general insurance add-on products to inform their Market Study in this area.

In general, the FCA's ongoing behavioural research does not primarily focus on exploring effects of specific consumer characteristics on decision-making, but it sometimes explores these issues indirectly.

Relationships with Money Advice Service, the Financial Ombudsman Service and the Financial Services Compensation Scheme

Journey to the FCA sets out the regulator’s approach to this “regulatory family”, stating its desire to develop strong relationships in order to better protect consumers:

“they can provide us with very useful insight into the issues affecting consumers and how firms are behaving – such as the types of problems that consumers contact the Money Advice Service about. We will then be able to use this information to decide whether to intervene and to inform our policies and other activities” (FSA 2012: 49)

The Financial Ombudsman Service is identified as a useful source of intelligence on emerging problems.

The Financial Ombudsman Service is identified as a useful source of intelligence on emerging problems.

Financial Services Consumer Panel

The Financial Services Consumer Panel (FSCP) is an independent statutory body set up to represent the interests of consumers in the development of policy for the regulation of financial services. They “advise and challenge the FCA from the earliest stages of its policy development to ensure they take into account the consumer interest”⁷². There is no requirement for them to have regard to any “groups” of consumers, however in the past their terms of reference have mentioned consumers who are particularly disadvantaged or with little access to financial services. The terms of reference with regard to the FCA are now being reviewed. In the past the Panel’s work has tended to be issue-driven, and they do not have an overall work programme relating to vulnerability. That said, there is an increasing focus on developing a strategy, and a 2012 Financial Services Consumer Panel position paper (Financial Services Consumer Panel 2012a) attempts to move the issue forward by developing a framework for identifying and communicating risk. The paper introduces and explains three terms: vulnerability; at a disadvantage, and consumer disadvantage. The Panel hopes to use this to encourage the FCA to tackle consumer detriment at an early stage. It has been very supportive of the work that the FCA has been doing recently around consumer vulnerability and a member of the Panel sits on the FCA’s Consumer Vulnerability Network (mentioned below).

Influencing wider policy

The FCA has stated that it wants to engage more effectively with a wide range of consumer groups and be more responsive in the way it listens and reacts. In 2012/13 the FSA developed a consumer organisation network that is continuing under the FCA. This comprises consumer organisations from across the UK that meet twice a year. Between meetings there is on-going bi- and multi-lateral engagement with members of the Network. FCA engagement with the members is tailored by the CMI department to ensure that it is proportionate to consumer organisations’ resource and capability.

⁷² See FSCP website: <http://bit.ly/1BfTOAN>

The network has the following objectives:

1. Establish and maintain productive and trusting relationships with consumer organisations.
2. Create improved flows of information and insight between consumer organisations and the FSA. (FSA 2013: 68)

The Consumer Network has been an important development in engaging with other bodies in order to gather intelligence and spot risks at an early stage. The Financial Services Consumer Panel (2012b: 5) commented that:

“Establishment of a Consumer Network, where new and emerging risks can be highlighted is welcome. The FSCP calls for the FCA to be more open-minded in the way it gathers information and needing to demonstrate its ability to act on it. There is also a concern that the FCA is too London-centric in the way it engages.”

Since this was written the FCA has held meetings in Edinburgh, Cardiff and Belfast (with more planned), as well as placing a secondee at Money Advice Scotland.

The Consumer Network has been instrumental in providing the FCA with initial evidence of consumer detriment as a result of consumer vulnerability. Its evidence has provided the momentum for the current work stream. The Consumer Network has been consulted on the proposed work plan and has responded positively to the suggestion that it agrees a set of high-level desired outcomes for cross-cutting themes. There is also now an established Consumer Vulnerability Network which grew out of the general consumer network and a Consumer Credit Network. The Consumer Vulnerability Network has been encouraged to challenge the ideas put forward by the FCA. The FCA is also planning to organise meetings between the consumer representatives and trade associations in order to foster a dialogue on the relevant issues.

6.5 Organisational culture and accountability

The FSA has a programme of secondments to third sector organisations, which helps to build understanding, but also, importantly, capacity builds consumer organisations to engage with it better. There are currently four secondees placed with external consumer organisations including two with Citizens Advice, one with Age UK and one with Money Advice Scotland. All of these secondees are placed with no charge to the external organisations and is an example of the FCA “putting its money where its mouth is” when it comes to engaging better with consumer organisations.

The most recent annual report talks about training staff to give greater understanding of vulnerability:

“The FSA also established consumer insight training that provided FSA staff with an insight in to the needs and vulnerabilities of UK consumers. Further training to provide staff with an understanding of consumer behavioural biases when selecting products will continue under the FCA.” (FSA 2013: 68)

Measuring outcomes

Consumer Focus (2009) praised the FSA for measuring impact through an Outcomes Performance Report. This set out nine outcomes, three under each strategic aim. None were specifically relevant to vulnerability although those relating to “Help retail consumers achieve a fair deal” include aspects of treating customers fairly, and products that meet needs, capability and clear, simple, relevant information.

This report will be subject to review by the FCA which said in its Business Plan that it will publish its new approach to evaluating its performance, based on a consultation exercise carried out by the FSA. As far as we can establish this has not yet been published.

Neither the FSA’s 2012/13 Annual Report nor the FCA’s Business Plan 2014/15 include any specific focus on consumers in vulnerable circumstances. The FCA commented that it was too early to say how a consumer vulnerability strategy might be monitored and assessed. Impact assessments are developed which are relevant to specific sectoral areas within FCA.

6.6 Key lessons and challenges

It is clear that the FCA does not see issues around consumer access to financial services that may be deemed essential as within its remit unless these fall within its competition, or potentially consumer protection, objective. So for example if consumers within certain postcodes find it impossible to obtain affordable house insurance, this could be tackled from a competition perspective if companies are found to be cherry-picking certain groups of consumers and not offering products to other groups. The regulator may ask companies to justify the cost of offering certain services, or for evidence to underpin certain decisions – for example if a firm chooses not to offer travel insurance for people over 75, their underwriting basis for this could be challenged. It remains to be seen how the FCA will have regard to matters relating to consumer access that arise in pursuit of its competition objective.

The FCA argued that its remit was sufficient, and that the lack of requirement to have regard to specific groups of consumers enabled it to take a broad approach to vulnerability. Despite the lack of an obvious statutory underpinning for its vulnerability work, the FCA has embarked on an ambitious work programme in this area which it aims to apply in all parts of its activities and, ultimately, to try and changes attitudes within the firms and industries that it regulates.

Financial Conduct Authority references

- Consumer Focus (2009) *Rating Regulators: Financial Services Authority*
- Consumer Focus (2011) Evidence to the Joint Committee on the Financial Services Bill, published with HL paper 236/HC1447, 2011.
- Coppack, M 'Developing a partnership approach with consumer organisations and industry' presentation at "Addressing Financial Difficulties" Meeting run by Citizens Advice on 23rd Oct 2013, London
- Financial Conduct Authority (2013a) *How the FCA will investigate and report on regulatory failure*
- Financial Conduct Authority (2013b) *Risk Outlook 2013*
- Financial Conduct Authority (2013c) *The FCA's approach to advancing its objectives*
- Financial Conduct Authority (2013d) *Motor legal expenses insurance: Consumer market research*
- Financial Conduct Authority (2013e) *Applying behavioural economics at the Financial Conduct Authority*
- Financial Conduct Authority (2014) *Consumer credit and consumers in vulnerable circumstances*
- Financial Services Authority (2006a) *Levels of Financial Capability in the UK: Results of a baseline survey.*
- Financial Services Authority (2006b) *Financial Capability in the UK: Establishing a baseline.*
- Financial Services Authority (2012) *Journey to the FCA.*
- Financial Services Authority (2013) *Annual Report 2012-13*
- Financial Services Consumer Panel (2012a) *Defining consumer vulnerability and disadvantage*
- Financial Services Consumer Panel (2012b) *Journey to the FCA: Response by the Financial Services Consumer Panel*
- Financial Services Consumer Panel (2012c) *Consumer Responsibility: Position Paper*
- HM Treasury (2008) *Thoresen Review of generic financial advice: final report*
- National Audit Office (2007) *A review under section 12 of the Financial Services and Markets Act 2000*
- Wheatley, M (2012) Speech at the British Bankers Association, available at: <http://www.fsa.gov.uk/library/communication/speeches/2012/0125-mw.shtml> (accessed 20/02/14)

7. Conclusions and recommendations

The research has shown that the regulators involved in the communications, energy, financial services and water sectors are seeking to develop a better understanding of the factors that contribute to consumer vulnerability in these essential services and how these should be tackled. The factors include consumers' own circumstances and the roles of the companies and markets they regulate.

This is happening for a variety of reasons and it is long overdue but nevertheless welcome. The key question is what happens now: in particular, how the regulators 'operationalise' their developing approaches to consumer vulnerability.

The key question is what happens now: in particular, how the regulators 'operationalise' their developing approaches to consumer vulnerability.

Using powers and influence

Tackling consumer vulnerability is a challenging task for the regulators. But while it may be complex, having a strategic and effective approach to consumer vulnerability is essential if the regulators are to carry out fully their duties to protect consumers' interests. It is vital that the regulators continue to develop their understanding and act upon it to improve matters for the large numbers of consumers facing difficulties in these essential services. This means being prepared to use their powers appropriately and to the maximum where needed, and to influence the companies to change poor practices and behaviour.

Challenging assumptions

To date regulatory approaches and government policies have often been based on encouraging consumers to be more engaged in these sectors as 'active consumers' to find better deals (apart from water services). Ensuring that markets operate fairly is of course vital. Information on tariffs, deals and contracts needs to be clear, reliable and easily compared. But it is unrealistic to expect that everyone is able to be an 'active consumer' at all times.

Finding your way through ever-more complex and changing markets can be tricky for anyone, and many people have lots of other pressures in their lives. People may be behaving very rationally within their circumstances, for example, if they simply do not have the time or energy to compare deals or switch providers. Consumers may also be concerned about potential risks, especially if they are in vulnerable situations.

There is considerable interest within the regulators in studying how and why consumers make particular choices and how these choices may be affected, for example by consumers' circumstances and experiences and how information is provided. But it is crucial that their work takes full account of the reality of consumer vulnerability, including individual circumstances and the roles of markets and companies.

Having a clear strategy

A key issue is how the regulators formulate their approaches to consumer vulnerability in order to inform their work and to influence the companies they regulate. One option is to publish an explicit vulnerability strategy as Ofgem has done. The energy regulator has found this to be beneficial in providing a framework for policy development, as well as setting out its expectations of the companies. It remains to be seen whether the other regulators go down this route or find other methods. What matters is that their thinking and expectations provide a firm organisational basis, and are clear to the companies, and to consumers, policy-makers, and other external bodies.

One option is to publish an explicit vulnerability strategy as Ofgem has done... It remains to be seen whether the other regulators go down this route or find other methods.

Evaluating effectiveness

The regulators' strategies on consumer vulnerability must be underpinned by clear work programmes, including set outputs and desired outcomes. This is essential to inform their internal work and monitor its effectiveness, and for the purposes of wider accountability.

We also recommend that the regulators involve external organisations and experts to inform and help audit their approaches to tackling consumer vulnerability. This could be done through existing structures (such as the Financial Services Consumer Panel and Ofcom's Communications Consumer Panel and Advisory Committee on Older and Disabled People) or through setting up 'challenge groups', with clear mechanisms so that external input is taken on board and seen to be so. This should not be a one-off exercise but instead an integral part of the regulators' consumer vulnerability policies and monitoring. So, for example, the challenge groups would have a role in helping to inform outputs and in evaluating outcomes.

Organisational commitment

Of fundamental importance is the need for organisational leadership and backing at senior levels within the regulators for strategies to tackle consumer vulnerability. Overall the findings suggest that the regulators are aware of the need to avoid simple box-ticking. There are interesting lessons to be shared about how to operationalise their approaches to consumer vulnerability through internal structures and monitoring, for example, through use of the consumer interest toolkit developed by the Communications Consumer Panel or those being developed by the FCA.

Of fundamental importance is the need for organisational leadership and backing at senior levels within the regulators...

Changing company behaviour

A key question is whether the regulators' approaches to consumer vulnerability result in better outcomes for consumers through improvements in company policies and practices.

The regulators have a range of instruments and tools to influence the companies, and they use different approaches, including interventions such as mandatory requirements, the use of incentive mechanisms, and sharing learning and good practice.

But much more needs to be done as many consumers in vulnerable situations are facing a raft of difficulties in dealing with essential services. This means being prepared to use all means at their disposal to protect consumers' interests.

The regulators need to ensure they are alert to practices that contribute to consumer vulnerability, are prepared to act swiftly to address those problems, and that they monitor the effectiveness of their interventions. For example, the FCA's recent action to ban pre-ticked boxes for insurance add-ons, and to force firms to be more transparent about claims ratios are designed to increase consumer protection and enhance the ability of the regulator to spot potential mis-selling.

The regulators need to involve the companies as much as possible, for example, through workshops, guidance and sharing good practice, and show that having a better approach to consumer vulnerability is in the companies' interests. But the regulators must also be prepared to intervene decisively to tackle continuing market or company failures that contribute to consumer vulnerability.

There are also situations where regulators do not have current powers to intervene. However, it is important that they are prepared to be part of wider discussions to find solutions, for example, Ofcom's work with other bodies to find ways of tackling nuisance calls.

But the regulators must also be prepared to intervene decisively to tackle continuing market or company failures that contribute to consumer vulnerability.

Organisational intelligence

Having a targeted and rounded programme of consumer research is vitally important for regulators to develop their understanding of consumer vulnerability. It is also vital that they have a good evidence base to demonstrate the rationale for their policies and to underpin decisions, including enforcement actions.

It is clear that, subject to resource constraints, the regulators recognise the value of consumer research and the importance of involving consumers in vulnerable circumstances. The extent of research undertaken and the methods employed vary across the regulators. For example, Ofcom and Ofgem have been carrying out detailed consumer research for a number of years to inform their policy and decision-making, including a number of studies specifically geared towards consumers in a range of vulnerable situations. At the time of writing the FCA is about to carry out specific research among consumers in vulnerable circumstances for the first time.

There are challenges involved in ensuring that research includes consumers in a wide range of vulnerable circumstances but there are very useful experiences to be shared particularly

about ways of involving consumers who may be marginalised or considered as ‘hard to reach’. This is a ripe area for collaboration and discussion between the regulators, especially to discuss good practice and possibilities for co-ordinating some research.

In addition, the regulators should continue to explore ways in which organisations who work directly with people in vulnerable circumstances could help inform research plans and potentially be involved, for example, in advising on research content and design, and/or through helping to involve participants.

Sharing knowledge and good practice

The findings demonstrate that there is a great deal of scope for experience and lessons to be shared across regulators in relation to tackling consumer vulnerability. Many issues, for example those around payment for essential services and debt management, cut across different regulated industries and call for a joined-up approach by the regulators. It would be highly beneficial for there to be regular meetings to share learning and to discuss problems in order to develop best practice and effective policies.

... findings demonstrate that there is a great deal of scope for experience and lessons to be shared across regulators in relation to tackling consumer vulnerability.

The recent launch of the UK Regulators’ Network (UKRN) offers a highly relevant means for collaboration on issues relating to consumer vulnerability.⁷³ We welcome the announcement that one of the first areas of work for the UKRN will be a comparative study of regulators’ approaches to affordability. It would be very valuable for this to be widened to look at consumer vulnerability across these sectors and how it can be tackled.

Widening the networks

Organisations that work with or advise consumers in a wide range of vulnerable circumstances have valuable insights and data to inform the regulators’ understanding and to alert them to emerging risk of detriment. This research has shown that the regulators are aware of the value of involving external organisations in their work and are taking initiatives to do so; for example the FCA is involving its Consumer Network in its new vulnerability work stream. There is a lot of scope for this to be done in more strategic ways. For example the regulators could consider a programme of joint discussions on selected topics through the Essential Services Access Network (ESAN).

Other options include shared workshops on issues affecting consumers in vulnerable circumstances that could involve some providers and a range of third sector and civil society organisations. In addition, the regulators should explore the potential for inviting external organisations to speak to their staff and boards about topics that affect consumer vulnerability in these sectors, and to be involved in workshops for the companies.

⁷³ See <http://bit.ly/YhhawN>

However, the regulators need to find ways of widening their networks without placing undue burdens on voluntary organisations who may well be hard-pressed. This is another reason why greater collaboration is likely to be beneficial.

Informing and influencing

It is evident from this research that there is significant work being carried out across all the regulators regarding consumer vulnerability but this is not always obvious from the outside. The regulators need to review their communication strategies, including how information is presented on their websites. For example, at the time of writing, Ofcom set up a dedicated section of its website to its work on participation and vulnerability. In doing so they will need to be mindful of how information is presented for a range of different audiences, including consumers themselves, consumer organisations, and organisations working with people in vulnerable circumstances who may not be familiar with the regulators' remits and work.

In addition, broader public policy-making also needs to be underpinned by a good understanding of the factors that contribute to consumer vulnerability and some of the regulators are sharing their approaches more widely. However, the regulators need to consider what else they can do to inform wider public policy-making at UK and EU levels.

Overall the regulators should be more pro-active and clear in publicising their approaches to consumer vulnerability, what they are doing, and the limitations of what they can do.

Implications for public policy

It is also necessary to look beyond the regulators to tackle consumer vulnerability in these services. Their remits are limited and wider social policy is a matter for government, especially regarding affordable access to essential services. Consequently the responsibility of government is critical in considering how to tackle consumer vulnerability. The regulators should be prepared to highlight issues of concern that affect consumer vulnerability which are beyond their statutory remits to government and Parliament.

Some critical issues relating to consumer vulnerability raise questions about the responsibility of government, as well as that of the regulators. A notable example is where company or market practices mean that poorer consumers end up paying higher prices for essential services than others through what is termed the 'poverty premium'. As stated in other Consumer Futures research (Hirsch 2013), government needs to become involved in this conversation, either because regulators' present powers are constrained or because some remedies are more appropriately the responsibility of the government.

It is also necessary to look beyond the regulators to tackle consumer vulnerability in these services. Their remits are limited and wider social policy is a matter for government, especially regarding affordable access to essential services.

From the regulators' point of view, clarifying the relationship between their roles and that of wider public policy would help to address gaps between external expectations and their actual powers and responsibilities.

Ensuring that there is clearer division of responsibilities between government and the regulators is being addressed in part, for example, through the replacement of Social and Environmental guidance in the water and energy sectors by strategic priorities and objectives in the Energy Act 2013 and the Water Act 2014. However, this still leaves open the crucial question of government responsibility for ensuring affordable access to essential services, and what interventions are required in terms of wider public policy.

Recommendations

The findings point to the following recommendations:

1. Regulators should ensure that all regulated companies involved in the provision of essential services treat all consumers fairly and inclusively without creating unnecessary barriers or difficulties.
2. Regulators should ensure that their work is based on a rounded understanding of the wide range of factors that contribute to consumer vulnerability, including not only consumers' circumstances but also the roles of markets and companies.
3. Consumer vulnerability strategies need to be accompanied by clear work programmes that set out how the strategies will be put into practice across all relevant aspects of regulators' work, including economic and competition issues. Wherever possible regulators should consult on their plans and how they intend to prioritise their work on tackling consumer vulnerability.
4. Regulators' policies and approaches to consumer vulnerability should be underpinned by clear governance frameworks and linked to wider goals and strategies. This will require adequate resources, effective monitoring processes and strong organisational commitment and leadership. All regulators should have at least one Board member with responsibility for this area.
5. Regulators should aim to involve and influence the companies as much as possible but also demonstrate that they are prepared to intervene speedily to change poor practices and behaviour that cause or exacerbate consumer vulnerability.
6. Regulators should ensure that their approaches to consumer vulnerability provide an effective basis for organisational policies and decision-making, and are clear to the companies they regulate, and to consumers, policy-makers, and others.
7. All regulators should have systems for measuring and reporting on outcomes and progress relating to tackling consumer vulnerability. The regulators should use existing consumer representation structures or consider setting up 'challenge groups' that involve external organisations and experts in order to inform and help evaluate the effectiveness of their work to tackle consumer vulnerability.
8. All regulators should have ongoing consumer research programmes that identify and track issues related to consumer vulnerability in their respective sectors, and seek to involve organisations working with consumers in vulnerable circumstances in helping to plan their research.
9. Regulators should continue to develop a range of ways to collaborate on tackling consumer vulnerability, including through forums such as the UK Regulators' Network.
10. The UK Regulators' Network should expand its work on affordability to look at the factors that contribute to consumer vulnerability across sectors.

11. Regulators should explore further ways of widening their networks, especially so that they are in regular touch with organisations working with consumers in a wide range of vulnerable situations.
12. Regulators should review their communications strategies as a matter of priority so that their approaches to consumer vulnerability are presented in ways that are clear and coherent to all stakeholders.
13. Regulators should use their developing insights into consumer vulnerability to inform wider public policy-making at UK and EU levels, and also be prepared to draw attention to issues of broader concern that are outside their remits.
14. The government needs to consider its role in tackling the causes of consumer vulnerability in essential services as a matter of urgency. As part of their work to tackle consumer vulnerability in essential services, the regulators should highlight areas of concern that need to be addressed by other relevant parties, notably by government and industry.

Report produced by Centre for Consumers and Essential Service, University of Leicester

The Centre for Consumer and Essential Services (CCES) combines legal and social policy expertise to explore the effects for consumers of regulation and provision of essential services. CCES provides research and consultancy, and its current focus includes the energy, communications, health, social care, financial services, legal services, and water sectors. Because of the importance of these services, the Centre is particularly concerned to highlight the problems faced by people in a wide range of vulnerable situations. CCES is based in the School of Law at the University of Leicester; for more information, see <http://www.le.ac.uk/law/cces/index.html>

Citizens Advice

Aims and principles

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

200 Aldersgate London EC1A 4HD

Telephone: 03000 231231

www.citizensadvice.org.uk

www.adviceguide.org.uk

Citizens Advice is an operating name of The National Association of Citizens Advice Bureaux. Registered charity number 279057.