

# **Capturing the Consumer Interest: A Report of the Launch of the Toolkit for Regulators and Government on 2 February 2006**

## **Summary**

1. Capturing the Consumer Interest provides a toolkit to help Ofcom and other regulators and government, to help assess whether or not they have identified and addressed the consumer interest when forming and implementing policy. The toolkit covers a series of questions that regulators can ask themselves to ensure that consumers are appropriately considered throughout a particular project or by the organisation as a whole. Also the toolkit is flexible enough to allow consumer representatives to use it to review whether or not a regulator has sufficiently taken into account the consumer interest within its regulatory activity.
2. The Consumer Panel believes it to be crucial that the interests of consumers are at the forefront of regulation - that the consumer's voice is heard as clearly as the voice of the well resourced and powerful industries. This is the real test of whether regulators are making a genuine difference to consumers. The toolkit framework is based on defining, evidencing and communicating the consumer interest throughout the development of new policy. The toolkit can be used beyond the communications industry and is of relevance to a very wide variety of regulators in the UK and elsewhere.
3. The launch was attended by senior representatives from regulators, government, Parliament, consumer bodies and industry. The toolkit was warmly welcomed by attendees who viewed it as a strong addition to their armoury when holding regulators to account and as part of the better regulation agenda. It was also recognised by those who attended the launch that the toolkit was flexible enough to not only take into account the consumer but also citizen issues. The National Audit Office (NAO), Office of Water Services (Ofwat), the Consumer Council for Water, the Food Standards Agency and the Financial Services Authority Consumer Panel all expressed strong interest in how they could incorporate the toolkit within their own work.
4. The launch was broken up into two sessions. The first session set out how the idea for a toolkit came about, its contribution to the better regulation agenda, its uses and design. There were speeches from Colette Bowe, Chairman of the Ofcom Consumer Panel, Graham Mather, member of the Consumer Panel, Ed Humpherson, Director, Regulation, NAO, and by PricewaterhouseCoopers LLP on the subject.
5. In the second session Stephen Carter, Chief Executive of Ofcom and Philip Fletcher, Director of Ofwat explained how the toolkit is directly relevant to their work, how it strengthens their present framework for regulatory impact assessments and how the toolkit moves the better regulation agenda forward.

6. The discussion and responses to these presentations raised the following key issues:
  - Participants felt the toolkit was a valuable contribution to the better regulation agenda and would have wide applicability for both public and private organisations.
  - The following organisations expressed an interest in understanding more about and how to use the toolkit – Ofwat, Food Standards Agency, Consumer Council for Water and Financial Services Consumer Panel. The Ofcom Consumer Panel will support organisations wishing to use the toolkit and are interested in learning from their experiences.
  - Can the toolkit be equally well applied to citizen issues and support policy-making when trade-offs need to be made for different consumer groups? We will use the toolkit to evaluate Ofcom's work on citizen issues and publish our conclusions about Ofcom's progress in tackling consumer/citizen issues.
  - Should the toolkit should include a definition of consumer and citizen issues? We will help to develop thinking on this through further evaluative case studies and explore the idea of holding a workshop to develop this definition, drawing on existing knowledge.
  - Can the toolkit help regulators to take into account behavioural economics? The Panel will give this further consideration in its next evaluative study of Ofcom.

## **Session 1: An introduction to the Consumer Interest Toolkit**

### **Colette Bowe , Chairman, Ofcom Consumer Panel**

#### **The Consumer Panel**

7. The Chairman of the Ofcom Consumer Panel opened the morning session and welcomed everyone to the launch of the Consumer Interest Toolkit and explained that the Consumer Panel is a statutory body; its existence is enshrined in the Communications Act of 2003. The Consumer Panel comprises of ten (subsequently increased to twelve) part time members who view their role as being a 'critical friend' to Ofcom. The Panel members are specialists in particular policy areas and are from diverse backgrounds. It takes a strategic view and role when engaging with Ofcom on issues thus guaranteeing its work has the greatest impact. The Consumer Panel's primary role is to hold Ofcom to account and ensure that it takes on board the consumer and citizen issues when formulating or developing policy.
8. The Consumer Panel is therefore different to the classic model of consumer and citizen representation. For example, it is different to the National Consumer Council because it does not take on a campaigning role and is involved in a process of continuing engagement with Ofcom.

- Also the Panel is unlike Energywatch which deals with customer complaints - in telecoms an ombudsman scheme exists. In contrast the Consumer Panel sits alongside Ofcom in the same building. This enables it to engage early on and influence Ofcom's policy decision-making process.
9. The Panel undertakes its own research that ensures that its own decision-making process and advice is evidence based. This is central to the Consumer Panel because it stops agency capture - by relying on Ofcom's own evidence base - and allows the Panel to set its own agenda. Part of the Consumer Panel's agenda is to engage with the current political debate on consumer protection and better regulation issues.

### **Background to the Toolkit**

10. The toolkit began as an idea centred on an audit, but it soon became clear that an 'audit' had too strong a connotation – it brought into play a process heavy approach when in fact an evaluative approach was required. Yet because the toolkit stems from an audit approach it asks a regulator hard questions:
  - Did the regulator take into account the consumer interest within its policy making process?
  - How did the regulator do it?
  - Did the regulator do it well?
  - Can the regulator demonstrate its work so that it can be accountable to others?
11. When the idea of the toolkit was first mooted it was warmly endorsed and supported by the Ofcom board and executives. This has been sustained throughout its development process. A response by Ofcom to the toolkit is published in the document Capturing the Consumer Interest. The response sets out how Ofcom will implement the toolkit throughout the organisation. It is felt that this is the first time a regulator has been held so closely to account for its work on behalf of consumers.
12. It is felt that other regulators and organisations outside of the communications sector can benefit from using the toolkit to assist them to take on board consumer and citizen interests.

## **The Value of a Consumer Interest Toolkit**

**Graham Mather, Ofcom Consumer Panel Member and President of the European Policy Forum**

### **History of regulation by Governments and Operators**

13. There is a history of legislators currently introducing legislation that has great economic and public policy implications but often little or no economic assessments of what their potential impact on society are made, and only the sketchiest of trade offs are ever considered. Because legislation is often made with amendments being tagged on, policy piles up on the statute book without ever being reviewed as to their effectiveness. The lessons of history are rarely learned.

### **Current Developments in Improving Regulation**

14. Governments around the world are looking at how to improve pre-implementation and post-decision reviews. Economic regulators are presently thinking about how they can best improve their own systems of developing and implementing policy. They are doing this by looking back at past mistakes and successes and are using the Regulatory Impact Assessment tool.
15. Europe is also taking an interest in better regulation and in particular, the use of the Regulatory Impact Assessment tool as a valuable and powerful means of tying down the objects of legislation or regulation, quantifying the various dimensions – to the general economy, society, to the environment – and then providing a basis against which the eventual results can be measured. In May 2006 the European Parliament will adopt a series of reports which will emphasise that better regulation requires both ex-ante and ex-post impact assessments to test whether objectives can be or have been achieved.
16. The work undertaken by Europe has fed into Ofcom's own thinking and Ofcom has recently issued its own new guidance on how Regulatory Impact Assessments should be carried out. Ofcom will integrate the Consumer Interest Toolkit within its Impact Assessment to create a framework within which the consumer interest can be defined and taken into account when formulating policy and against which it can measure results.

### **Impact of the Toolkit for Policy Makers**

17. The Consumer Interest Toolkit provides a sophisticated and comprehensive means of delivering the results desired by Ofcom and Europe in capturing the consumer interest. It provides a methodology for capturing the consumer interest that can then be built into a Regulatory

- Impact Assessment framework. If legislators and regulators can be more precise in understanding what impact legislation and regulation will have, there can only be a benefit to society.
18. Impact assessments will never be a perfect science as it is about balancing trade-offs and estimating consequences. But the toolkit will help policy makers deliver more focused inputs to the debate to ensure that poor regulation for consumers is not the result of inattention. It will put vested interests to the test by forcing them to prove their points and it is a force for transparency, accountability, responsibility and improves the quality of regulatory decision-making.

## **The Uses of the Consumer Interest Toolkit**

**Ed Humpherson, Director, Regulation, National Audit Office**

### **Three Trends in Regulation**

19. The Consumer Interest toolkit is important and relevant to three trends in regulation over the past ten years:
- Ensuring regulatory accountability: The toolkit requires regulators to be explicit about how it has made the trade-offs in balancing stakeholder interests and its objectives when developing and implementing a policy. The growth of independent consumer bodies is part of this goal of accountability. Regulators often have a duty to further the interest of consumers.
  - The role of Regulatory Impact Assessments. The toolkit requires the regulator to challenge policy decisions and stakeholder interests, and to communicate its consumer policy to stakeholders in an integrated way. It is unhelpful to have a consumer interest department or policy separate from Regulatory Impact Assessments.
  - 'Bettering' regulation: The toolkit helps improve regulation and enables consumer advocacy groups to engage with the process by reducing transaction costs which could otherwise be prohibitive. In essence better regulation is about maintaining and enhancing regulation while minimising costs.

### **Cross-Sector use of the Toolkit**

20. The toolkit's importance is that it can be used by a great range of organisations - it is not sector specific. Internally, organisations - from the management leadership to policy teams - can use it to ensure that their work balances all the interests the best it can when making trade offs. But just as importantly, the toolkit can be used by external groups to check that organisations are taking into account stakeholder concerns. These organisations could for example be the Ofcom Consumer Panel, the

Consumer Council for Water, the board of an organisation or even the NAO.

### **Risks Associated when using the Toolkit**

21. There are, however, risks involved when using the toolkit that people need to bear in mind.
  - Carrying out an assessment of a policy cannot be done lightly.
  - To use the toolkit as an inflexible checklist would be wrong. It is a flexible resource. It can be used lightly as a guide to an away-day discussion through to an audit and everything in between.
  - If used by external bodies to review a regulator's work, it is essential that there is trust between the two organisations to ensure that the toolkit delivers a correct outcome.
22. This last point is especially important because the strength of the relationship will greatly affect the quality of the toolkit's outcome. The maturity of Ofcom is noticeable by it having engaged so completely with the process and to be so transparent in its workings.
23. The NAO welcomes this new approach. It is crucial that the interests of consumers are at the forefront of regulation. This toolkit can ensure that regulators continue to place the consumer interest at the heart of their work. Its importance goes beyond the communications industry and is of relevance to a very wide variety of regulators in the UK and elsewhere.

### **Design and Application of the Toolkit**

**Alison Sprague and Peter Smithson, Directors,  
PricewaterhouseCoopers LLP**

### **Background to the Toolkit**

24. PricewaterhouseCoopers LLP (PwC) described how the toolkit was designed from its initial concept to the finished product. The Ofcom Consumer Panel wanted to review the way in which the consumer interest is taken into account within Ofcom's regulatory activity and to ensure that Ofcom fully understands such interests, that they are given appropriate weight, and are ultimately furthered by the decisions that Ofcom takes. PwC examined Ofcom's strategic approach to identifying the consumer interest, for example looking at project management and consultation procedures and made two detailed case studies – Ofcom's consultation on mis-selling in the telecoms sector and the Telecoms Strategic Review, phase 1 and 2.

## **Defining the Consumer Interest**

25. At the beginning of the process it was important to ask: how could a regulator define the consumer interest? This was essential to avoid people assuming what the consumer interest is because there is no simple definition. The Communications Act does not make this definition clear. Definitions are often contestable and debatable, not always obvious, and it varies across different sectors and projects. A framework is required to ensure consistency of approach.
26. There was also a risk to avoid when trying to define the consumer interest: that of doing lots of research to understand the consumer interest but the actual outcome is lost in the detail. Ofcom needed a simple approach, complimentary to its existing impact assessments.
27. A tick box approach had to be avoided but the toolkit had to ensure that its processes were capable of being “audited”. The toolkit is thus based around 31 core questions on how to deliver the consumer interest.

## **Ofcom’s Experience of Taking into Account the Consumer Interest**

28. When PwC reviewed how Ofcom took into account the consumer interest in its regulatory activity, it found the consumer interest was implicit not explicit across Ofcom’s regulatory work. However, PwC did say that Ofcom’s mis-selling project, one of the case studies, was done well in making the consumer interest explicit and concluded that: the project was well supported by documentation and the underlying process; the views of consumers were sought to inform the project; the Board was keen to balance consumer issues with the concerns of other stakeholders and inter-temporal aspects were considered explicitly through the use of a sunset clause. The TSR received less favourable commentary on these aspects.
29. PwC recognised that in some cases it is hard for Ofcom to simply define the consumer interest because trade-offs have to be made between present and future possibilities. It is therefore important for regulators to communicate, internally and externally, why regulatory change is required, what the likely impact on the consumer interest would be, and to make it clear why other stakeholders’ interests have been given precedence over others.

## **Cross Sector Use and Delivering Benefits**

30. The toolkit has been designed to be sufficiently flexible so it can be applied at any level of assurance. PwC also felt that the toolkit is applicable to other sectors including the private sector which often has problems communicating to its consumers. The hope is that going forward the toolkit will be used and refined in order to deliver the following benefits: raise awareness of the consumer interest; to deliver a consistent

approach; to be verifiable and transparent; to make sure the consumer interest is explicit; and to develop best practice.

### Consumer Interest Toolkit: 31 core questions

<b>Organisational issues</b>	
	<b>Point of focus</b>
<b>Defining the consumer interest</b>	
1	Is there a clear view of who the consumer is?
2	Is there a consistent approach for how the organisation identifies and defines the consumer interest?
3	Are there clear policies and procedures setting out the organisation's approach to dealing with consumer interest issues?
4	Are there controls in place to ensure these policies and procedures are followed?
<b>Risk assessment and planning</b>	
5	Is there a process of ensuring consumer interest issues are taken into account in the development of the organisation's periodic business planning process?
6	Are the consumer interest issues included in the planning process supported by evidence of consumer key issues?
7	Are there adequate processes to gain feedback from consumers on the organisation's annual plan and to take their comments into account?
<b>Training and knowledge management</b>	
8	Is there regular liaison with consumer bodies to keep the organisation informed about their issues and concerns?
9	Is there regular research carried out to inform the organisation about key consumer issues and concerns?
10	Are there training courses in place for personnel to help them understand and appreciate consumers' interests and issues?
11	Is there monitoring of training to ensure that all personnel involved in studies which are relevant to consumers have received appropriate training?



	<b>Project specific</b>
	<b>Point of focus</b>
	<b>Planned projects</b>
12	For each project are the relevant consumer interest issues explicitly explained?
13	Is the project work plan clear about how the consumer interest issues identified will be addressed?
14	Is there a risk assessment process in place that helps define the significant impact and complexity of the consumer interest issues involved?
15	Are there appropriate processes devised to ensure evidence is gathered from consumers on the key issues being addressed by the project?
16	Are there appropriate processes in place to ensure that the key consumer interest issues are addressed in the final output from the project?
	<b>Emerging issues</b>
17	Are there clear processes in place for regularly logging key consumer concerns?
18	Are the key consumer concerns reported reviewed regularly to identify issues that are emerging that are of concern to consumers?
19	Are there processes for ensuring that emerging consumer interest issues are identified and actioned appropriately?
20	Are there clear processes in place to initiate a project to investigate significant emerging consumer issues?
21	Are there processes in place to determine the urgency of an issue and are the timescales set for the study consistent with the urgency of the issue to be investigated?

<b>Organisational and project specific</b>	
	<b>Point of Focus</b>
	<b>Communication with consumers</b>
22	Are there clear processes in place that set out how the organisation communicates with consumers?
23	Are there processes in place that ensure that the organisation communicates in a way that allows consumers to understand the issues being considered?
24	Are there processes in place by which the organisation explains the decision or actions they have taken (including for example explaining why consumer interest issues may have been sub-ordinate to other issues)?
25	Are there clear channels through which consumers can communicate and raise issues with the organisation?
	<b>Organisational controls</b>
26	Are there regular reports prepared for senior management on consumer related issues?
27	In relation to specific investigations and projects are senior management made aware explicitly of the key consumer interest issues and how these are being addressed?
28	Is there a process in place to ensure peer review and internal challenge of significant consumer interest issues (e.g. definitions, identification of whether an emerging issue is valid, a proposed regulatory change)?
29	Has management established performance indicators that allows it to monitor whether consumer issues are being addressed?
30	Are there management systems in place for logging consumer related issues and for ensuring such issues are followed up on a timely basis?
31	Does management regularly review its approach to dealing with consumer related issues to ensure that it reflects advances in good practice? For example does it benchmark its processes against processes operated by other organisations involved in consumer matters?

## **Session 2: Using the toolkit to improve regulation**

### **The Impact of the Audit on Ofcom's Regulatory Approach Stephen Carter, Chief Executive, Ofcom**

#### **Consumer Representation**

31. The Consumer Panel operates and aids Ofcom take into account the consumer interest within its regulatory activity. The Consumer Panel is a critical friend to Ofcom which inputs early on into Ofcom's policy formulation and its Annual Plan. It is strategically focussed guaranteeing that the big picture isn't lost amongst the detail and ensures its work has the greatest impact. The Consumer Panel is different to the traditional model of consumer representation one which is usually distant from the regulator and often adversarial and is not as effective as the Consumer Panel because regulators are more likely to listen to a critical friend than a body which is overtly adversarial.

#### **Capturing the Consumer Interest**

32. The Communications Act of 2003 puts the consumer at the front and centre of Ofcom's regulatory work. Ofcom thinks that the consumer interest is best met by setting the sector as near to a proper and effective functioning market as you can. Identifying, capturing and articulating the consumer interest is difficult for a regulator to do and a balance has to be made between short-term gains and longer-term outcomes that will bring sustainable benefits through investment, innovation and competition which will deliver a range of choice and affordability to consumers.
33. In trying to deliver the public interest people often tie themselves into knots with over formalised bureaucratic processes. Their intention is not wrong but often the implementation of policy is convoluted and impenetrable. The toolkit provides a broader interface to understand how Ofcom can best deliver the consumer benefit and not fall into the trap of solely minimising risk which ultimately delivers detrimental results for the consumer.

#### **Consumer Representation within Ofcom**

34. Ofcom found that the assessment of its policies by the toolkit beneficial by making it think about and consider the consumer interest. Over the past two years Ofcom had been slow in having a considered focus on the consumer interest. This partly reflected its inheritance from the five legacy regulators. The consumer interest had become implicit not explicit in the legacy regulators work, and they had a focus on inter-industry dispute resolution. Also it takes a while for a new organisation to bed down.

35. Ofcom now has workstreams to ensure that the consumer interest is adequately reflected in its regulatory activity. The workstreams fall under four broad headings: consumer protection; informed consumers; competition in the consumer interest (competition of itself is not equivalent to the consumer interest); and structures and processes.
36. Some of the changes have seen: the appointment of a Consumer Policy Director who is part of senior management and therefore able to bring the intellectual rigour and clout within the organisation to bear; the relocation of the Consumer Policy Team into the Strategy and Markets Development Group so that its work infuses the whole organisation; and the strengthening of Ofcom's investigation functions to ensure a swift enforcement programme.

## **The Value of the Toolkit in the Field of Water Regulation**

**Philip Fletcher, Director General, Ofwat**

### **Ofwat and Ofcom Face Similar Issues**

37. Ofwat explained that water sits at the other end of the regulation spectrum to communications- partly because the water market is currently still largely a monopoly market and that the regulator still has to set price limits. Water is essential to life - it is therefore a citizen issue too. Because domestic consumers have no choice of supplier, consumer information is essential. However, the regulator is an economic regulator and therefore deals with similar issues to Ofcom. For example, Ofwat has to protect the interests of consumers and wherever appropriate by promoting effective competition. But the courts have not addressed what protecting the consumer interest means.
38. Ofwat's statute was recently changed from one that referred to customers everywhere to one that talked about consumers. Ofwat's duties now refer to particular groups of consumers - for example: the chronically ill; the disabled; those on low incomes; and individuals of pensionable age. Like Ofcom, Ofwat needs to work closely with many stakeholders, including consumers and their representatives, the regulated industries concerned, fellow regulators and government. And there are the same conflicting duties between securing the short-term and long-term benefits for the consumer and the subsequent balancing of trade offs when developing policy.

### **Consumer Representation**

39. The model of consumer representation in the water market has recently changed. Watervoice was housed within the regulator but the new Consumer Council for Water has an independently appointed chair, has an independent budget, sets its own priorities. Unlike the Ofcom

Consumer Panel it handles complaints – there are no ombudsman schemes such as those that exist in the communications market. For consumer representation to be effective, like the Ofcom Consumer Panel, it is important to have a ‘critical friend’ and not to be routinely adversarial in nature, otherwise sensible and constructive dialogue between a regulator and consumer representatives will be lost.

### **Cross Sector use of the Toolkit**

40. Ofwat views the toolkit as an important instrument to ensure that it is taking into account the consumer interest through its commitment to regulatory impact assessments. It will also help with its commitment to: consult; to demonstrate its accountability; to make use of better regulation principles and provides a framework for better regulation principles. It can undoubtedly help organisations across all sectors help clarify a regulator’s mind when it comes to addressing particular issues or developments – though regulators in other sectors may find the need to slightly tweak the questions to make them more relevant to their sector. But certainly the toolkit adds to and helps provide a strengthened framework for Ofwat’s own process.

## **Discussion of the Toolkit and its Value for the Better Regulation Agenda**

### **Introducing Behavioural Economics and the Citizen Interest**

41. London Business School thought the toolkit was a terrific first step but wondered what the next steps would be. It also thought the key issue ahead would be how to balance economic assumptions about consumers with reality. Also, balancing these trade offs would become more difficult when the citizen dimension is introduced. But importantly London Business School wanted to address the fact that those who respond to consultations are atypical and therefore organisations should be looking at behavioural economics and empirical consumer research when making the trade offs to define policy.
42. The Consumer Panel responded that in Ofcom’s response to the toolkit, Ofcom plans to take the trade offs the London Business School mentions into account and that the Consumer Panel will be scrutinising how effective Ofcom is at this. In response to the behavioural economics question the Consumer Panel is looking at this issue and for example it will be researching whether we can assume as a society we will develop a high level of adaptability to new technology and the digital divide will naturally close (essentially we are witnessing a technology time lag) or that the reverse is true and that some people will always be left behind as technology rapidly develops.

## Defining the Consumer Interest

43. The Financial Services Consumer Panel questioned whether PwC had done a wide enough scan to develop a definition of the consumer interest. In its view the intellectual landscape was not as barren as PwC had suggested. It pointed out that the consumer interest had been defined by President Kennedy as choice, information, safety and redress. While the Office of Fair Trading has developed a definition of consumer detriment and the United Nations has developed guidelines on consumer protection including such things as: the right of access; the right to be heard; the right to education; and the right to the environment.
44. The Royal National Institute for the Blind (RNIB) wished to support the Financial Services Consumer Panel in its view that consumer issues have been around for a long time and asked whether the definition of consumer interest had been defined too narrowly and whether in the future the net would be cast wider.
45. PwC replied saying that the point that it was trying to make was that the consumer interest is not static and that it has many components, not necessarily about access or price. Therefore the consumer interest had to be continuously looked at.
46. The Consumer Panel added that through further use issues such as these will be tightened and developed, with the goal of developing a wider understanding of what the consumer interest is. A broader definition of consumer interest of the consumer interest should also emerge as Ofcom has committed to using the toolkit on citizen issues. The Panel would also like to develop the toolkit in this area.
47. The Voice of the Listener (VLV) said that in communications there are rapid technological changes and competition. How one defines the consumer interest when looking at policies to regulate and reflect these changes is difficult. In advertising the consumer is a commodity too.
48. Ofcom said that it has clearly been led by the domestic consumer but in broadcasting it is even more complex when taking into account the consumer interest. The BBC is a deliberate market distortion and Ofcom regulatory powers in this area are greatly limited. Ofcom doesn't think it is overly led by institutional interests. It undertakes and looks carefully at market research to understand the consumer interest.
49. The Financial Services Consumer Panel felt that the toolkit could benefit from including other important consumer categories e.g., vulnerable consumers. For example, there are trade offs when taking a policy decision help vulnerable consumers as there is likely to be a higher economic cost in delivering the policy than for others and the group may also need a different set of regulatory requirements.

## **Cross Sector use of the Toolkit**

50. Baroness Howe asked that since legislation is increasingly becoming consumer orientated e.g. choice for parents in relation to education, whether the toolkit can be used by local authorities to check whether they are doing the right thing? The Panel said that the toolkit did not foreclose options.
51. The Financial Services Consumer Panel was pleased to hear that the toolkit could be used by business and that this may mean the environment is moving to a higher principle-based regulatory environment. The Ofcom Consumer Panel said that the toolkit can be used by the board of an organisation to help it ask the right questions of its policies. It is not for the sole use of consumer representatives.
52. The NAO said that when work began on the toolkit it thought the project would be much smaller and it had not realised how wide the toolkit could be applied. The NAO said that it hoped the toolkit would be taken up by other organisations, across the sectors, and utilised. But that when it was used for the first time by other organisations the questions posed by the toolkit would have to be re-thought and behavioural evidence would have to be inputted.

## **Consumer Voice and the Value of the Toolkit**

53. The FSA Consumer Panel congratulated the Ofcom Consumer Panel for its work saying that the toolkit reconnected the regulator with consumers. Concern was expressed that the government's proposed new consumer model, Consumer Voice, would replace the current model that sits across the desk to the regulator with one that is distant from the regulator which would have a detrimental affect on consumer representation. Does the toolkit pave the way for organisations to self-regulate on behalf of consumers better and so pave the way for a lighter level of regulation?
54. Ofcom said that the regulatory challenges within the two sectors of communications and finance are acutely different but echoed the view that removing consumer representation from the heart of the regulatory environment would be a mistake. It was felt that unlike communications services, financial services providers don't include the consumer interest into its core business. Communications services are also liked. Ofwat said it was important for regulators not to be complacent and it would work with WaterVoice to ensure the consumer interest is at the heart of its work.
55. The Consumer Panel suggested that the boards of companies should ask the questions raised by the toolkit and hold executives to account for the delivery of the company's policies.
56. The NAO said it had initially thought of its involvement in the toolkit as a small project! The idea of having one tool for public and private sectors was appealing. It would be helpful to think through whether or not the concepts are sufficiently behavioural.

## Balancing Trade-offs

57. The National Consumer Council said that the toolkit is still missing a systematic method for evaluating trade-offs for different categories of consumers (e.g. vulnerable consumers are more expensive versus the majority). Ofgem said that regulation is an art and not a science and felt that the toolkit would bring some science to the art. It recognised the toolkit is only the start of a move to putting consumers at the heart of regulation but that it will stop people from wooliness of thinking and what is now needed is to reflect on how to move forward. This is especially pertinent in the energy sector where there are trade offs between protecting present and future consumers. For example, present consumers having to pay higher prices for future improvements that benefit future customers. Ofwat felt that the toolkit would help create a systematic approach for thinking about consumers and echoed the need to think about current versus future consumers.
58. Ofcom said that it hoped the toolkit questions would be refined as echoed by the authors of the report. And while it agreed that regulation was an abstract art, Ofcom does try and frame policy within a context in order to see the picture, even if it does not like the picture. Ofcom must look at the future because it works in a global market and has to make judgments between competition and choice or coverage and provision. And because public policy is conservative it is easier to choose coverage rather than think of the future benefits to consumers. If Ofcom was only influenced by current consumer concerns then it would put a brake on progress which would have a detrimental impact on choice, wealth, jobs and thus the consumer interest.
59. The NAO said that trade offs in public policy are constantly having to be made. For example, how much should the average water consumer pay to protect perhaps as few as 10, 000 households from sewer flooding. Should direct debit and standard credit users cover the extra costs of energy prepayment meters to make sure low income households do not pay more for their energy? And what about the fact that mobile phones on contracts are far cheaper than pay as you go phones? The toolkit will get policy makers to ask the right questions, it would not provide the answers to these questions.
60. The Consumer Panel said that the toolkit is not about answers but about asking the right questions and holding up regulatory policy to public accountability, to be transparent and to have better regulation. The toolkit is an open source document and is available to any organisation that wishes to utilise it.