

Customer engagement in the regulation of network industries

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The appropriate role for customers in a regulatory process depends on how that process is conceptualised. At one extreme, regulation can be thought of as a form of a political process which involves bargaining and negotiation between interested parties over the issues and that there is no one, correct answer. At the other end of the spectrum regulation can be seen as a technocratic process which requires specialised expertise and information that, when applied to the issues, can produce, at least in principle, correct answers to questions (Foster 1992). It may be that there is a lack of information or significant uncertainty about certain matters which means that, in practice, it is difficult to be certain that the answer(s) are correct, but that does not invalidate the effort. Regulation in the real world falls between these two extremes, but this is a useful starting point to think about how arrangements for consumer representation would differ, depending where on the spectrum the particular form of regulation at issue might be placed.

If regulation is conceived of as a political process then certain arrangements would be more common. There would be direct consumer representation within the agency, for example, at board level in a UK context. (For the purposes of this paper, I am using consumer and customer as synonyms.) The processes of decision making would take place much more in public forums and allow for greater challenge to the points of view of industry and regulators from consumer or customer representatives. Those who were representing the consumer would also have to be funded, perhaps through a levy on the bills. There would need to be bodies with a remit to represent the consumer interest which could be either statutory or voluntary. For example, there are a variety of consumer advocates at state level in the United States with statutory remits (see National Association of State Utility Consumer Advocates/NASUCA) as well as voluntary bodies (e.g. the Utility Reform Network, TURN).

Whilst the US may be a good example of a system where regulation is viewed as somewhat of a political process, in the UK, regulation has been seen largely as a technocratic exercise. Although there have been a variety of statutory consumer bodies existing over the years they have been bedevilled by uncertainty over their purpose and, in recent years, the thrust of government policy has been to wind them up, replace them with advisory committees and move their functions to Citizens Advice (BIS 2012). The last remaining specialist body is, of course, CC Water although there are consumer panels in communications and financial services. Policy making in the UK regulatory sector is not an adversarial but a consultative process. In the course of making policy the UK regulators generally act openly and produce a substantial amount of consultation documents and operate a variety of fora where they can obtain views. This is, however, consultation, not an opportunity for challenging the views of either the regulator or the other participants.

Looking to the future the regulatory agenda in a number of areas is becoming less technocratic, less about detailed issues of economic price regulation, despite being still critical in relation to water and energy distribution, and increasingly more about issues of sustainability and affordability, as well as consumer information and contract terms. More regulators in a variety of sectors are also now considering the issues of consumers in vulnerable circumstances, the first being Ofgem (2013). As these issues come more to the fore in the UK, there is clearly a role for consumers to play in developing policy in these areas. This in turn comes at a time of great challenge to a voluntary sector faced with major funding challenges and operating under severe time constraints. Local authorities are increasingly having to focus on their core remits, rather than devoting time to regulatory issues which might impact upon their communities. Significant responsibility has passed to Citizens Advice and it will take some time before it becomes apparent how well it will be able to undertake this mandate.

Regulatory policy is also beginning to be shaped away from the UK level. Decisions at European Union level are having an increasingly important effect on regulatory policy. Some issues may also migrate below the UK level. There are, for example, different fuel poverty strategies in all four parts of the UK and the provision of consumer advocacy and advice in Scotland will become a devolved matter under the Scotland Bill. The EU arrangements pose particular problems for consumer organisations to participate in the policy making process given the length of time it takes, the location (Brussels) and its opacity.

There are, therefore, both opportunities and challenges in relation to involving consumer in the regulatory process. A starting point is to ask what can we expect from consumer representatives? The problem is that many of them will not have a high level of technical expertise or access to independent sources of information. What they can offer is a form of independent challenge to positions and approaches taken by regulators and companies. In order to do this effectively they will need access to information, in a timely manner, and resources to help them analyse the information. In addition they are often well placed to identify issues that are occurring on the ground through, for example, complaints or complaints data. It is a truism that there is frequently a gap between the high level intentions of an organisation and the implementation of policy. Locally based consumer bodies are well placed to spot issues as they first arise, also ones that have national help lines.

There are a number of things that regulators can do to help promote consumer involvement. It is important for them to reach beyond the usual list of organisations with which they consult. For organisations that are new to the area, it could make sense for the regulator to give them a named contact. At the same time, it is also important that regulators design their processes taking into account the needs of consumer groups and the voluntary sector. For example, it would be worth asking voluntary organisations how they would like to be consulted. For some of them responding to a written consultation in the normal manner might be favoured, for

others they might prefer workshops where the issues can be discussed and debated. Given the resource pressures that the voluntary sector is under it would make sense for the regulators to identify common issues on which they could consult, rather than a series of individual consultations.

The climate within the UK does seem to be moving more in favour of greater consumer engagement with the development of regulatory policy. For this to be effective, not only do the regulators need to be clear about the role that is to be played by consumer representatives, but they will also need to offer them significant support, particularly for the voluntary sector. Otherwise, the regulator may end up depending on individual consumer advocates with sufficient resources and interest in the process to act as proxies for all consumers. This may work in relation to certain sectors or issues but consumers are not homogenous and cannot be seen as all having the same interests (see Locke 1998). Consumer advocates therefore also need ways of ensuring that they are themselves in touch with issues affecting consumers in a variety of circumstances and also that they operate transparently and accountably.

References

BIS (2012) 'Empowering and protecting consumers: Government response to the consultation on institutional reform'. London: Department for Business Innovation and Skills.

Foster, C.D. (1992). *Privatization, public ownership and the regulation of natural monopoly*. Oxford: Blackwell Publishing.

Locke, S. (1998) 'Modelling the consumer interest', in G.B. Doern and S. Wilks (eds), *Changing regulatory institutions in Britain and North America*. Toronto: University of Toronto Press.

NASUCA <<http://nasuca.org/>> Accessed 12 January 2016.

Ofgem (2013) 'Consumer vulnerability strategy'. London: Ofgem.
<https://www.ofgem.gov.uk/sites/default/files/docs/2013/07/consumer-vulnerability-strategy_0.pdf>

TURN <www.turn.org> Accessed 12 January 2016.

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