



**NATIONAL CONSUMER
FEDERATION**

Bringing Consumers into the Regulators Code

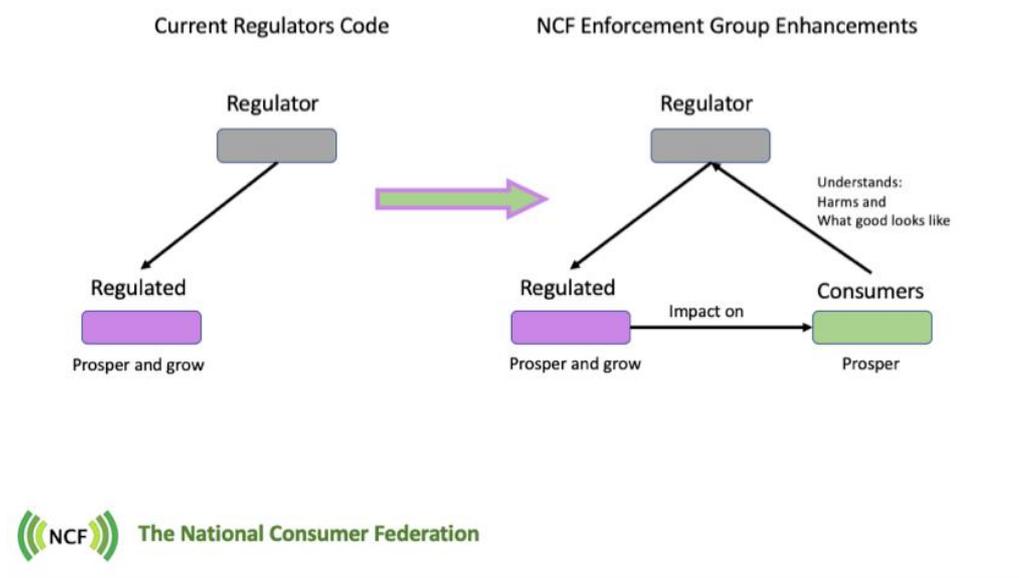
The NCF proposes that the Regulators Code (the Code) be extended to ensure that regulators achieve an adequate balance between consumer and business interests.

Regulators share a common primary purpose – to regulate for the protection of the vulnerable, the environment, social or other objective.¹

The main purpose of regulation is to promote and protect the interests of consumers in sectors where market forces alone would not deliver the best outcome²

Both of these statements put consumers at the heart of regulation. Taken together they call for regulators to engage with both consumers and businesses. However, the existing (2014) Regulators Code is aimed primarily at the relationship between the regulators and the regulated as part of the long running Better Regulation initiative. Much of what is said should apply equally to the relationship between regulators and consumers and the other beneficiaries of regulation. The diagram below illustrates how the extended code incorporates regulator understanding of consumers, in terms of the harm that regulation is designed to prevent and what a good outcome for consumers looks like.

NCF Proposals to enhance the BEIS Regulators Code



¹ Ministerial foreword to the 2014 Regulators Code

² Consumers Charter for Regulators (see Appendix A)

Who is a 'consumer'?

'Consumer' as defined in consumer protection legislation generally relates to final consumption, sometimes extended to cover SMEs on the basis that they are as much in need of protection as are 'consumers'.

The 2014 Code covers a diverse range of businesses, from some relating to particular sectors (energy, telecoms, railways, financial services), to activities such as gang masters³. The objectives and beneficial effects of regulation are diverse and may variously be focused upon consumers (as understood by consumer legislation), 'vulnerable' groups, employees, the environment, social progress and the wider economy.

In the remainder of this document unless otherwise indicated, 'consumer' refers to the beneficiaries of regulation. The 'customers' (of the regulators) refers to regulated businesses.

Both the consumer and customer interests should be embedded in regulation through a legal framework and governance including lay representation of consumer and business expertise and an organisational culture that embraces consumer interests.

What a good outcome looks like for consumers

Regulations are the means to an end and need to be part of an overall strategy. Regulators should be monitored and reviewed regularly to enable them to ensure that they deliver and continue to deliver the desired outcomes, with a duty to make recommendations to government or to other sponsors as necessary.

The Consumers Charter for Regulators⁴ sets out what a good outcome for consumers includes:

- Access for all
- Clear, simple, accurate and understandable information
- Fair marketing practices
- Effective choice
- Fair and transparent pricing and contracts
- Quality delivered as agreed or as contracted terms
- Protection from unsafe products
- Resolution of individual complaints free to the consumer
- Clarity about what regulation can and cannot deliver
- (added later) Protection from financial detriment

In the following pages we show how the text of the Code might be strengthened to explicitly recognise the consumer interest. The aim is that efficient regulation should deliver good outcomes for consumers (and others) without imposing unnecessary burdens on regulated businesses.

³ This Code was laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"). Regulators covered are listed by order under section 24(2)

⁴ A copy of the full Consumers Charter for Regulators is at Appendix A

Amendments to the text of the Regulators' Code to incorporate the consumer interest

1. **Regulators should carry out their activities in a way that supports those they regulate to comply and prosper**
 - 1.1 **Regulators should deliver good outcomes for consumers without** ~~Regulators should avoid~~ imposing unnecessary regulatory burdens through their regulatory activities⁵ and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity **and the number of consumers affected. Regulation should not favour existing entities over new entrants or inhibit innovation.**
 - 1.2 When designing and reviewing policies, operational procedures and practices, regulators should consider how they might **provide good outcomes for consumers**, support or enable economic growth for compliant businesses and other regulated entities⁶, for example, by considering how they can best:
 - **understand the benefits to consumers that regulation is intended to deliver and the impact of non-compliance**
 - understand and minimise negative economic impacts of their regulatory activities; minimising the costs of compliance to those they regulate and the cost of non-compliance to consumers;
 - improve confidence in compliance for those they regulate, by providing greater certainty; and
 - encourage and promote aids to compliance including the use of self regulation through Codes of Practice.
 - 1.3 Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.
 - 1.4 Regulators should ensure that their officers understand the statutory principles of good regulation and of this Code, and how the regulator delivers its activities in accordance with them.

⁵ The term 'regulatory activities' refers to the whole range of regulatory options and interventions available to regulators. The terms 'business or businesses' is used throughout this document to refer to businesses and other regulated entities.

2. Regulators should provide simple and straightforward ways to engage with and hear the views both of those businesses they regulate and those consumers who benefit from regulation

- 2.1 Regulators should have mechanisms in place to engage businesses they regulate, and consumers (and others) that regulation is designed to protect, to enable them to offer their views and contribute to the development of regulatory policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on consumers and business and engage with consumer and business representatives.
- 2.2 In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.
- This paragraph does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent serious harm or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.
- 2.3 Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated. A 'regulatory decision' here includes any decision affecting a beneficiary of regulation such as an individual consumer or employee by way of arbitration, dispute resolution or the award of compensation.
- 2.4 Regulators should provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.
- 2.5 Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator.
- 2.6 Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer and consumer feedback, including, for example, through customer satisfaction surveys, data from ADR bodies or information from those who have contacted the Regulator directly (eg consumers making a complaint to the Regulator about a regulated business).

3. Regulators should base their regulatory activities on risk

- 3.1 Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks. **Priorities should be determined by the risk of harm to consumers arising from non-compliance.**
- 3.2 Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.
- 3.3 Regulators designing a risk assessment framework⁷, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly. **Those affected includes those who benefit from the protection that regulation affords.**
- 3.4 Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.
- 3.5 Regulators should review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly. **Desired outcomes include generating good outcomes for those who benefit from regulation.**

4. Regulators should share information about compliance and risk

- 4.1 Regulators should collectively follow the principle of “collect once, use many times” when requesting information from those they regulate.
- 4.2 When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.

5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply

- 5.1 Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in

⁷ The term ‘risk assessment framework’ encompasses any model, scheme, methodology or risk rating approach that is used to inform risk-based targeting of regulatory activities in relation to individual businesses or other regulated entities.

itself. Regulators should make clear how their advice to regulated entities relates to delivering good outcomes for consumers.

- 5.2 Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience. Guidance should include what regulation is intended to deliver and to whom. Examples include defined outcomes for consumers, the environment or health and safety.
- 5.3 Regulators should have mechanisms in place to consult those they regulate and those consumers who are protected by regulation in relation to the guidance they produce to ensure that it meets the needs of regulated businesses and delivers good outcomes for consumers.
- 5.4 Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without necessarily triggering enforcement action.
- 5.5 In responding to requests for advice, a regulator's primary concerns should be to provide the clear advice necessary to support compliance-
- 5.6 Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator. Regulators should consider advice provided by other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement, taking into account the impact on harm to consumers.

5A **Enforcement**

- 5.7 Regulators should ensure that effective compliance checks and enforcement mechanisms are in place that address and reduce harm to consumers. Those mechanisms may include use of a regulators own resources, use of accredited 3rd parties such as Trading Standards, utilising independent assessment of compliance with National Standards (BSI) and 3rd party compliance assessment.
- 5.8 Sources of information to trigger enforcement action include complaints from consumers and businesses, compliance checks and market monitoring. Regulators should, where relevant, regularly analyse and monitor national data on consumer complaints and concerns, such as those recorded by the Citizens Advice Consumer Helpline (held on their CDW database) and approved ADR schemes
- 5.9 Recognising that higher standards in the following areas should further encourage compliance, regulators should encourage businesses in the effective handling of complaints from consumers, in the settlement consumer disputes and in awarding compensation to consumers.

6. Regulators should ensure that their approach to their regulatory activities is transparent to both regulated businesses and to consumers

- 6.1 Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them. **Service standards extend to 'any decision affecting a beneficiary of regulation such as individual consumers or employees by way of arbitration, dispute resolution or awards of compensation.**
- 6.2 Regulators' published service standards should include clear information on:
- a) how they communicate with those **involved in regulatory decisions** ~~they regulate~~ and how they can be contacted;
 - b) their approach to providing information, guidance and advice for businesses and consumers;
 - c) their approach to checks on compliance, including details of the risk assessment framework used to target those checks as well as protocols for their conduct, clearly setting out what those they regulate should expect and the outcomes for consumers.
 - d) their enforcement policy, explaining how they respond to non-compliance;
 - e) their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges; and
 - f) how to comment or complain about the service provided and routes to appeal.
- 6.3 Information published to meet the provisions of this Code should be easily accessible, including being available at a single point on the regulator's website that is clearly signposted, and it should be kept up to date.
- Information should be easily available to consumers and should aim to drive their choices in ways that encourage compliant businesses to flourish.
- 6.4 Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.
- 6.5 Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions, as well as independent data relating to the effectiveness of Regulation for intended beneficiaries, such as statistical trends in consumer complaints about businesses recorded on the Citizens Advice CDW database or approved ADR schemes.
- 6.6 **Regulators should consult representative bodies for business, consumers and other relevant interest groups.**

Coverage of the Code – who is a ‘regulator’? What is ‘regulation’?

A revised and extended Regulators Code should apply more widely than the existing list of statutory regulators covered by the 2014 Code. Much of the revised code should also extend to self-regulation and to dispute resolution, for example codes of practice recognised by CTSI and *Trustmark* and to recognised ADR, Ombudsmen or arbitration schemes.

APPENDIX A



A CONSUMER CHARTER FOR REGULATORS

The main purpose of regulation is to promote and protect the interests of consumers in sectors where market forces alone would not deliver the best outcome. An effective regulator will...

Put consumer interests at the heart of what regulators do through...

- A **legal framework** that includes a primary purpose to pursue the interests of current (and future) consumers
- A **vision and strategy** backed by project management and other organisational processes in which the consumer interest is embedded;
- A **Board** with a lay Chair and a lay majority including consumer expertise;
- **Culture and values** that ensure consumer interests run through their behaviour and everyday ways of working.

Understand what a good outcome looks like for all consumers and deliver it including...

- **Access for all** including disabled people and consumers in vulnerable positions
- **Clear, simple, accurate and understandable information** about products and services
- Fair **marketing** practices, where necessary curbing pressure selling and misleading advertising
- **Effective choice** for consumers between providers competing to offer better products and services at a better price, with the ability to switch easily
- **Fair pricing and contracts** with no hidden twists and tricks and no unfair cross subsidy
- The consumer interest taken into account when deciding issues affecting **infrastructure investment**

- **Quality** delivered to agreed or contracted standards and good quality outcomes which are responsive to consumer needs
- **Protection from harm** so that products and services which cannot be used safely cannot be sold
- Resolution of individual **complaints** quickly and fairly by regulated firms, and access for consumers to an Ombudsman or other independent mechanism for resolving disputes which is free to the consumer

Be an alert watchdog and act swiftly on behalf of consumers by...

- **Identifying risks**, scanning the horizon using consumer insight and intervening early to prevent problems emerging and to spot when things are going wrong
- **Creating the right incentives** for the market to work well for consumers
- **Ensuring that data is published** to allow consumers to compare performance of providers, for example on complaints
- **Working closely with other regulators** to maximise consistency of approach and share best practice including on enforcement
- **Involving consumers and their representatives**, including consumer bodies through regular dialogue and research to understand consumer views and behaviour in the development of policy and in delivery
- **Ensuring compliance with licence conditions and other rules** through investigations and effective enforcement backed by legal powers, imposing **penalties** on firms where rules have been breached and securing **redress** for consumers who have been adversely affected including compensation where appropriate

Be transparent and accountable to consumers through...

- **Working openly**, consulting and reporting regularly on their performance in achieving consumer outcomes
- Providing a readily accessible **channel for feedback** and complaints about the regulator
- Using **language** that ordinary people can understand

