



HOUSE OF LORDS

Industry and Regulators Committee

Corrected oral evidence: UK regulators

Tuesday 14 November 2023

11.50 am

Watch the meeting

Members present: Lord Hollick (The Chair); Lord Agnew of Oulton; Baroness Bowles of Berkhamsted; Lord Burns; Viscount Chandos; Lord Clement-Jones; Lord Cromwell; Lord Gilbert of Panteg; Baroness O’Grady of Upper Holloway; Lord Reay.

Evidence Session No. 4

Heard in Public

Questions 30 - 38

Witnesses

[I](#): Nicola Smith, Head of Rights, Social and Economics Department, Trades Union Congress; David Mendes da Costa, Principal Policy Manager, Citizens Advice.

Examination of witnesses

Nicola Smith and David Mendes da Costa.

Q30 The Chair: Good morning, and welcome to this resumed session of the Industry and Regulators Committee inquiry into UK regulators. I am delighted to say that we have two witnesses today who look at regulation very much from the perspective of the consumer and how the consumer benefits from and struggles with regulation. We will be exploring that today. We are joined by Nicola Smith, the head of the Rights, International, Social and Economics Department at the TUC, and David Mendes da Costa, principal policy manager, consumer policy at Citizens Advice, who worked for nearly six years at the Financial Conduct Authority. Welcome to you both.

Nicola, perhaps you can start. Could you talk to us about some of the key regulators that you work with, what experience you have had with them, particularly in dealing with knotty problems, and how they have failed or how they have succeeded—others will follow up on these issues—with the challenges that you have faced with regulators?

Nicola Smith: Thank you, on behalf of the TUC, for the opportunity to give evidence today. As you know, we represent more than 5 million workers across the economy and 48 different affiliated unions. Our engagement with the breadth of regulators across the UK is broad, coming at it always from the perspective of representing the workforce and ensuring that the concerns of people at work are of concern to the different regulatory bodies across different sectors of our economy.

In preparing for this session, we gave some thought to the breadth of different regulators that trade unions and their members engage with. From the TUC perspective, as the organisation representing affiliated unions, our main point of engagement with regulators is across labour market enforcement and looking at the enforcement of the UK's employment rights framework. That would be with people at HMRC who are enforcing the minimum wage, with the Employment Agency Standards Inspectorate, with the Gangmasters and Labour Abuse Authority, with the Director of Labour Market Enforcement and with the Health and Safety Executive. That said, of course very many of our affiliated unions both represent the workforce of some of the UK's regulators and have engagement with, and views on, the effectiveness of the UK's regulators from the perspective of how well they serve the interests of people at work, whether that is looking at issues such as food safety or pensions, or whether it is a concern about the professional regulation of healthcare workers.

The third point of contact that we as an organisation have with regulators is with the certification officer, who is, in effect, responsible for regulation of trade unions and a small number of employer bodies. It is the role of the certification officers, as you know, to decide whether unions qualify for a certificate of independence, which is required for statutory union recognition. Unions have to send their annual returns to her, and she

hears complaints about whether unions are claimed to have broken any statutory rules.

There is a breadth of perspectives that we could come with today, but from our perspective at the TUC the area that we are best placed to give evidence on is labour market enforcement and the role of the CO and the engagement trade unions have with her.

David Mendes da Costa: At Citizens Advice, we also interact with quite a wide range of regulators. Primarily, through our role as the statutory consumer advocate in the energy market, we interact with Ofgem, and in the postal market as statutory advocate we interact with Ofcom. Through our general consumer advocacy work we interact a lot with the Financial Conduct Authority, the Competition and Markets Authority and a range of enforcement bodies, such as trading standards, local and national, through our role delivering the consumer service.

It is probably worth saying a little about the distinction where we say we are a statutory consumer advocate rather than a general consumer advocate. In the energy and postal markets, we are an advocate and we have statutory responsibilities. We are funded to act as an advocate through a levy on the postal sector and on the energy sector. As a result of that, we have some of the resources available to follow the arguments and debates in each of those sectors in quite a lot of detail. That is not just at the retail end, which in our general consumer work quite a lot focuses on—the cutting edge between firms and consumers—but in our energy and postal work, where, because of the role as a statutory advocate, we are able to look all the way across the supply chain. For instance, we are able to look at wholesale markets and put the consumer voice forward in those markets.

In the energy sector, there is economic regulation and there are price controls, and we are able, to an extent, to put the consumer voice forward in those debates as well. In the postal sector, we can look in detail at things such as the universal service obligation, monitor whether the outcomes are being met under that and really get into some of the knotty and technical debates that take place in those areas. That is in part because we have some of the resources to hire technical expertise in that area. On the general consumer side, what we can look at, and what we have the resources to look at, is a bit more from our own initiative. As a result, as I said, it tends to be more on the retail side.

The first picture that I want to impress on you is that, as you look across the different sectors, you see that you have different types of consumer representation and different consumer voices within them, in some cases statutory and in some cases not, and there are some gaps. There are gaps in telco and there are gaps in financial services.

We see a variety of different approaches that each of the regulators takes to their consumer protection objectives. On the one side, some are more cautious than others and take a slightly more pro-market approach. In the case of Ofcom, it has, in its own words, a bias against intervention

that can sometimes lead culturally to a reluctance to intervene. On the other side, with regulators such as the Financial Conduct Authority, there is still the same leaning towards proportionality—I do not think any regulator would say that it does not look to be proportionate—but we have seen things brought in such as the new consumer duty, which has been path-leading in ways of approaching consumer protection.

We see a big variety across sectors in how regulators look to apply their consumer protection objectives. In the middle of those two pictures, there is how the consumer voice is heard within each of the regulators, and there is variety in that as well, in part due to resourcing and whether they are statutory roles. In another sense, it is a question of how far the consumer voice is not just another stakeholder but is integrated into the decision-making and the challenge processes within the regulators. That is a place where, if we were to look across all the regulators, all of them could probably do better.

The Chair: If you have a regulator that has a bias against intervening—did I hear that correctly?

David Mendes da Costa: Those are their words.

The Chair: How do you get them to account on those matters on behalf of workers or on behalf of consumers?

David Mendes da Costa: Sometimes with difficulty. With all of them you need to make the case. You would have to approach it by showing that there is relevant harm. To be honest, you would use the same arguments with any regulator; it is more a question of how far it is an uphill battle to try to actually get some action taken. As I said, all of them would look to be proportionate. Every regulator would look to do a cost-benefit analysis before intervening if it was going to be a policy change. That is the same. However, culturally, some regulators are more open to hearing about what can be done and what steps they could take, quite proactively, in order to help consumers achieve good outcomes in their markets, and others less so.

The Chair: Nicola, do you confront the people who have a bias to intervene and to get involved?

Nicola Smith: From the perspective of the regulation of labour law, our concern is that the governance of the regulators that are in place is not set up in such a way as to always ensure that the concerns of people at work and the experiences of the workforce are integrated into both the ambition of the regulator and the way it practises. We do not have tripartite systems with union, business and independent representation setting the strategy for much of our labour market enforcement. There is an approach in place in the Health and Safety Executive, but not across the Employment Agency Standards Inspectorate work or minimum wage work.

While as an organisation we have good official relationships with, for example, HMRC's minimum wage enforcement inspectors, we do not have a formal route to ensuring that the concerns of people at work play a part in setting the ambition and the vision of a regulator in how it should be approaching its work. We think that is a real concern, because it is appropriate, if you are looking at regulating something such as the enforcement of employment rights, to recognise that there is inevitably politics in how a regulator shapes its work, and that needs to be managed in a way that ensures the regulator can have sufficient independence, and so that a plurality of views can be taken into account in determining the best course of action.

What we have seen consistently over recent years is that, where there has been worker representation, that has been reduced, and there has been an increasingly political approach that regulators have perhaps felt they need to take in how they discharge their duties and what they do. For example, we have consistently called for small changes such as sector-based enforcement guidance on the minimum wage or for the Employment Agency Standards Inspectorate to look properly at the role of umbrella companies that are clearly violating aspects of labour law, and action has not happened. We can provide a consultation response and we can provide official feedback, but it should not be via that route that the voice of people at work is involved in determining the scope of labour market regulation. There should be a formal strategic process that means that the voice of employers and the voice of unions shape the ambition of what that regulation is, rather than its being as politicised as it has been recently.

Q31 Lord Cromwell: I am resisting the temptation to drag David into a discussion of the Horizon scandal. There is perhaps another day for that.

Purely from the consumer and worker perspective—the people you work with and work for—is it really clear to those people what role the regulators have and how they reach their decisions, and is it explained to them why those decisions are reached at all? How much interaction and interface do they have with the regulators and an understanding of their purpose?

Nicola Smith: It is variable, and, to a large extent, that comes down to resourcing. For people to understand that there is enforcement of their rights at work, there needs to be a clear route for them to make a report and there needs to be confidence that action will be taken in response. We have long-term under-resourcing of our labour market enforcement system in the UK. When you look at what the ILO says is necessary, which is one labour market inspector per 10,000 workers in industrial market economies, you see that we fall very far short of that. It is not insurmountably short—we need about another 1,800 or so labour market inspectors to bring us up to ILO standards—but we are in a context where most employers are never going to have a visit, and there is very limited visibility of the role of labour market inspectors.

There is no consistent approach across labour market enforcement to having to engage with the workforce and to engage with trade unions. When the HSE goes on a visit to a workplace—increasingly few, as its resources have been cut by 50% over the last 13 years—it has to engage with the workforce representatives, where they are there. That is not necessarily going to be the case across wider labour market enforcement, because it does not have the same sort of tripartite governance in place.

We have concerns about the extent to which the people who are in most need of high-quality labour market enforcement are able to understand its existence, engage with it and be represented in its structures.

David Mendes da Costa: I think the average consumer probably has relatively little understanding of how a lot of regulators operate, and in a way that is understandable. People operate on the assumption that the regulator is, hopefully, looking out for their back. If anything, what consumers should certainly have a clear understanding of, if not the way that regulators make decisions, is the expectations that they place on businesses. When as a consumer I am interacting with a business, I should understand what responsibilities and roles that business can have and what expectations that business has to uphold, so that I can understand, if they are not met, where as a consumer I can push back against a firm, where I can complain or where, potentially, I can take something to an ombudsman, if an ombudsman exists.

Detailed rules and detailed structures are very important, and we should not be moving away from them, but clear, high-level principles also have a role to play. That is where the FCA's consumer duty is interesting. From the perspective of a consumer, there is the opportunity with that duty for the FCA and the sector to clearly articulate what a consumer should expect from firms—namely that the firm should be working with them, communicating with them, and crafting its products and services in a way that meets and understands their needs. That is something you can articulate in a relatively straightforward way.

The fact that the financial services sector on the retail side has that is a great boon to consumer understanding and to consumers being able to push back where they think firms might not be doing the right thing. There is an awful lot of merit in looking at how far that structure of regulation—namely consumer duties—could have a role in other retail consumer sectors.

Lord Cromwell: I am getting the idea that it has developed perhaps in one sector but not across the board. You are talking about people pushing back. How do consumers do that? Where do they go to push back?

David Mendes da Costa: Initially, they can push back against the firm itself, and they can do so with advice. There are a lot of advice agencies around, and we have a role to play in that. If they fail to reach a conclusion that they think is correct, in most cases they can take it to an ombudsman. We are talking here a lot about where there are sector

regulators. Usually, where there is a decent sector regulator, there is also going to be a decent ombudsman. But if we step away from sector regulation and into places where there is consumer enforcement—for example, used cars or home repairs—there is no ombudsman in those sectors. There, it is a little more difficult to understand exactly where consumers can enforce their rights.

For the major sectors, where there are developed regulators that understand the nuance of the sector, looking at consumer duties could be a really important step.

Lord Cromwell: The second part of my question is again from that same consumer and worker perspective. The regulators, one might say, very much need clear, consistent objectives that do not conflict and are well prioritised. Has that been your experience?

Nicola Smith: It has not been our experience across some areas. A few years ago, enforcement bodies across labour law were told by the Government that they were going to be merged into a single enforcement body. A director was put in place across the Gangmasters and Labour Abuse Authority with specific responsibility for looking at how that might work. Then plans were scrapped. Nothing has happened.

There is a concerning politicisation to us in how enforcement bodies are able to go about doing their job. I do not think there has been a report published for the last couple of years from the Director of Labour Market Enforcement setting out its priorities. There are opportunities for stakeholders to share their views on a set of priorities, but there is no formal route for those views to be given due weight. There are often very high evidence requirements, particularly for labour market enforcement, before action will be taken. That is just not realistic.

Our concern is that there is not always clarity about how regulators should do their jobs because there is increasing politicisation of what they feel they are able to do. Partly, that comes from a lack of tripartite structures at the top of some of the regulators, and partly, particularly in the case of the certification officer, it comes from direct political involvement from the Government on what the requirements being placed on that office are.

Lord Cromwell: To clarify, you have outlined a sort of treacly process. Politicians attach an objective and then a great idea comes along and they attach another one and then another one, and they do not always work very well together. Is that your experience or not?

Nicola Smith: My experience is that effective regulation is being hampered by political interference and by a lack of tripartite structures that allow proper debate, discussion and agreement about how best to discharge a regulatory duty.

Lord Cromwell: There is an irony, of course, in that that political interference should be representing the consumer's voice, as it is

democratically elected.

Nicola Smith: As an example, in the case of what we have seen with the certification office, unions are being required to provide more and more information; additional provisions have been given to the office requiring unions and employers associations to pay into a levy; additional powers have been given to the office to launch investigations on the basis of complaints that have not originated from trade union members themselves; and there are additional powers to demand documents or appoint inspectors. All of that, in our view, is unnecessary. There is no evidence of widespread practice of the sort that would require additional regulation. There is a real concern that it is reducing the independence of trade unions from the state and that it is excessive in its approach. It is driven by a political agenda that is anti-union, rather than by any evidence of the need for resources to be prioritised in that way.

Lord Cromwell: David, is it all clear, prioritised and simple to work with?

David Mendes da Costa: Most regulators have a clear consumer protection objective. The objective is there, yet we do not always see regulators operating as swiftly or as effectively as we would like in addressing consumer harm and moving to put in place adequate consumer protection. In part, that is because some of the objectives are balanced against other objectives, duties or have regards to, and in some places those are in tension. It makes sense. Often, objectives sit in tension, and it is for the regulator and others to work out how to disentangle that tension.

Having those tensions and the other objectives and duties around them can mean that the consumer protection objectives get eroded a bit. The consumer voice can get lost among other duties. In some cases, it can lead to compromise or to incrementalist approaches that, in trying to balance lots of interests, do not actually solve the problems that are trying to be addressed at their root.

I am not sure that prioritisation is necessarily a silver bullet. In the case of Ofgem, while it has many duties, it has one primary objective, which is to secure consumer protection. Nevertheless, we see the consumer voice not cutting through all the time with Ofgem. In particular, the recent instance of forced installation of prepayment meters was something we were talking about a lot with the regulator. A lot of people were highlighting an issue that was clearly an important consumer risk. There were external factors such as the increase in energy prices, which would have meant that a lot of people who were being put on prepayment meters would be potentially cut off, because they were unable to keep topping them up, and would be in vulnerable circumstances. There was a very clear risk evident to the regulator—a regulator that has as its primary objective consumer protection—yet it failed to act until it became, essentially, a scandal and it came out in the press.

Lord Cromwell: Thank you both. That is really helpful.

Q32 Baroness O'Grady of Upper Holloway: I record my membership of the Bank of England Court and my former role with the TUC.

I want to ask more about your views on the extent to which regulators take on board workers' and consumers' interests when they are carrying out their functions. We have heard from Nicola about tripartism in labour market regulation, but, more broadly, are there good mechanisms that you could point to that you feel are really bringing the voice of the consumer or the worker into the room? To what extent do regulators recognise that the treatment of the workforce in an industry will impact directly on consumers' experiences? Do you feel that the consumer and worker voice is given equal weight to that of corporations? There may be subtle ways in which more weight is given to some voices than others. I want to get a feel for how it varies across regulators. Are there places you can point to and say, "That's working well", or, "This is really dire"?

David Mendes da Costa: As I mentioned earlier, one of the differences that we see across sectors is whether there are statutory consumer voices. We play the role in two markets. There is equivalence also in water and some other sectors. Where they exist, they are a good thing. The value that having a well-funded, independent consumer voice brings is the ability to look all across the market and along the supply chain, not just at the retail side, and ensure that there is a consumer voice at every stage and in every part of the debate. In energy, it is fantastic that we are able to hire ex-industry people to come and work for us at Citizens Advice and represent consumers in debates about infrastructure and network pricing, especially where there are monopolies.

You mentioned imbalances. There will always be an imbalance between the consumer voice, even where there are statutory consumer voices, and voices of industry. There is a numerical imbalance: there are literally more voices on the side of industry—large and medium-sized firms act as a voice and trade bodies can—whereas on the consumer side, it tends to be a single statutory advocate or a handful of voices. Ironically, the number of consumers numerically is much larger but the number of voices representing them is much smaller. There are also fewer resources available to consumer voices.

While more resources are really useful, we have to take it almost as a given that there will be that imbalance numerically and in resource, and look for different mechanisms to try to rebalance it. Those mechanisms could include giving greater weight to the consumer voice. In a merger, if there is a consumer response, you would look to give a smaller number of responses greater weight. It is more about integrating the consumer voice in the process.

I will quickly make one point. In the energy networks policy world, in the last year, 78 workshops took place, for two to three hours each, to decide price controls. We do not have the resources to attend that many meetings and to do all the work that is needed around them. Rather than up our resource so that we can go to all of them, it makes much more sense to have a body that can track it alongside, that can look at the

conclusions that come out and can challenge with teeth, to send things back to those working groups to think again. A much more efficient use of consumer resource is putting it near the end, in the decision-making process and with teeth.

The Chair: Nicola, do you have anything to add to that?

Nicola Smith: Starting with the operation of regulators themselves, there is clearly diversity of performance in how well the voice of people at work is integrated into their strategy and into their activity. At the HSE, there are, as I have reflected, requirements for HSE inspectors to speak with reps. There are board seats that are reserved for representatives of workers, albeit that, in recent years, we have seen concerns about the extent to which those seats reflect people who are able to speak credibly to the real-world workforce experience and represent people at work. Even in some of the best practice examples, we have seen an erosion of the extent to which the workforce voice is meaningfully integrated into the structures.

At the other end, the TUC used to have a seat on the GLAA. That has been removed. It is now reduced to a stakeholder forum, whereby people can submit information on concerns about workplace bad practice. There used to be a vulnerability advisory forum at the Home Office, where worker organisations could feed in their concerns about the treatment of migrant workers. That has been removed. As I have said, there is no formal mechanism for us to feed in and actively shape where the Employment Agency Standards Inspectorate targets its activity, despite huge amounts of evidence of particular sectors and particular practices that should be addressed. At the level of how regulators work, it is variable.

On the wider imbalance that Frances is talking about, I suppose you can look beyond regulators with responsibility for workplace enforcement. You could look at some of the health system regulators and the extent to which they are looking at workplace practice and the enforcement of wider healthcare standards. To what extent are regulators such as the CQC actively charged with going in and, where they see widespread concerns about practice in the workplace and widespread workplace insecurity, taking account of that and sharing it with other regulators? Are they then able to know—because we know what the evidence base is—that that is likely to show poor health outcomes and poor care outcomes because of bad treatment in the workplace?

There is a question about the extent to which poor workplace practice as an indicator of wider concerns for the wider provision of services is properly integrated into the work of all regulators. Beyond that, there is clearly not going to be an answer, I do not think, to the worst excesses of employment practice in the UK that involves a regulator being the driver of action. If you want to really look at how you might properly enforce employment rights across this country, you need a strategy that goes beyond the role of individual systems regulators and involves those regulators and others in a discussion about how we have the supply chain

mechanisms in place that require companies to enforce behaviour throughout their own supply chains, how we make sure that contractors have liabilities, and how we ensure that we are doing more to spread collective bargaining.

I know that it is not the scope of your inquiry today, but there is a question about regulators recognising, and having structures that recognise, the limitations of what their own regulatory action can achieve and where they need at least to point to the need for wider political and economic change as part of achieving their objective.

Q33 Lord Burns: You have briefly touched on the issue that I wanted to raise, but can I press you further on the extent to which you think that regulators that you have encountered have to address politically contentious topics or competing objectives? Do you feel that the Government provide sufficient guidance on these issues, or do they give too much guidance, or let us say interference, on these issues?

Nicola Smith: I have touched on this. To go back to my example about the role of the certification officer, we have a good relationship with the existing postholder. She consults and engages with trade unions, but there is no obligation on her to do so. There is an opportunity for politicisation of the role, which is very clear. We know that that is not just the TUC's view; it is the view of the International Labour Organization's Committee on the Application of Standards, which has instructed the UK to limit and define the investigatory powers of the CO so that they do not interfere in the autonomy and functioning of workers' and employers' organisations.

There are examples in our regulatory structures of where there is too much scope for political ambitions to shape the work of regulators, in a way that is not fair to the regulators themselves, to civil citizens' bodies and people in those bodies or to those who are the subject of regulation. It depends on how you define politically contentious. The reality is that, when you look across regulation, you see that some of what we are talking about today is intrinsically political. We need systems that recognise that and give regulators scope to reflect the breadth of political opinion about that, and to come to some conclusion and play a part in political debate about how they might best discharge their duties, rather than pretending that there is an apolitical answer.

At the moment, if you look across employment rights enforcement, you see that every year we have a plan, we have ticks for this happening and that happening, yet we still have huge levels of non-compliance that do not change year on year. There is a mismatch between a plan that says, "We have achieved this. We have had this many inspections. We have gone to this many places", and a reality, which is that very large numbers of workplaces never have an inspection, and have large amounts of bad practice, whether around agency legislation or payment of the minimum wage, that goes on unchecked. It is not within the scope of the regulator, as currently configured, to discuss that, to think about it and to put forward proposals for what might change it and what might drive us

forward in the medium term. There is not always the space for regulators to engage with the political realities of what they are being asked to do.

David Mendes da Costa: We feel that the fact that regulators have independence and operate independently from government is an important part of our regulatory landscape. I wanted to start by saying that. However, it is hard sometimes to separate problems into regulatory problems on the one side and social policy on the other side. Certainly, within regulators, social policy is very much something that you do not want to be seen to be doing. The phrase, "We can't do that; it's social policy", is said by many a regulator. The reality is that things cross over the boundary and interrelate with each other. That is especially true about things such as affordability and who can access certain markets, goods and services.

On the regulatory side, certain actions that are taken by regulators can have an impact on price and affordability. It can be difficult sometimes for regulators to know how to operate in that way when there can be, essentially, a social impact of some people being excluded from a market. Take as an example Ofgem having to set the energy price cap. In a regulatory way it was looking to get fair value, but it was a price cap that I think the rest of the world was looking at as to what it meant for affordability. That is a place where it is very useful for the Government and Parliament to step in to help address that mismatch.

Another example would be around consumer credit, which is within FCA regulation. Where the FCA has had to put in place price caps in high-cost credit, there have been a lot of questions or struggles with what that means for people who are then priced out of the market. The FCA has trodden quite a delicate path to try to look at the people who are priced out being better for not actually having the credit, but it still leaves open questions of what happens to those people and why they are in certain situations of needing credit in the first place.

There is value in the Government having a role in giving strategic guidance to regulators where those problems sit, but it has to go both ways. Regulators also have a role in highlighting to the Government where problems sit on their side of the fence. If we step back and look at it from the point of view of bodies that need to scrutinise both sides of the equation—like a Select Committee, which would be looking both at the role of a department and the role of the regulator—it is really important for them, as it is for us as consumer advocates, to make sure that problems do not get lost at the place where they cross over from the regulator to the Government or from the Government to the regulator.

Lord Burns: Can I press on this and maybe you can respond to it as well, Nicola? Is it possible to define more clearly those issues on which regulators should have independence and those issues where they should be looking for guidance? This is an area where there is a lot of cloud and where everyone is a bit hesitant. People point to the fact that there are conflicts and some issues that appear to be political sometimes and at other times not. Is there a way of giving more clarity to this whole area

of independence?

Nicola Smith: To respond to my colleague from Citizens Advice, this comes back to why it is so important to have a governance structure across regulations that takes into account a breadth of perspectives and gives proper weight to different perspectives. That question needs to be settled, regulator by regulator. No doubt, there will be a set of issues that will affect the extent to which the regulator can properly achieve its job and which go beyond the bounds that the Government of the day wish the regulator to look at. There needs to be proper debate and discussion, but the regulator needs sufficient independence to define its own terms and to set up the scope of what it should be looking at.

On minimum wage enforcement, I would like to see an independent regulator with a voice for the workforce that can look at the level of enforcement, the number of inspectors and the targeting of the strategy, and can come to an independent view, informed by trade unions and by employers, of what a proper enforcement strategy might look like and of what wider action we might need across our economy to make sure that minimum wage regulations are enforced properly. At the moment, we do not have that. We have a strategy set by government, given to the regulator, and the regulator has a limited amount of resources and does not seem to feel able even to comment on the extent to which its existing resources are sufficient to achieve its ambition.

By setting up a more independent approach, you create the space for that political debate and for there to be honesty about where there needs to be action that might go beyond the terms that the Government of the day might set.

Lord Burns: Does that regulator feel that it has the independence to do it, or does it feel that it is not defined in its remit?

Nicola Smith: I cannot speak for it, but I would say that you have to have a system that makes it clear to the regulator that it is responsible and is accountable to a board that includes representation from the workforce and employers, and not just directly to government for defining it. The Government have to be held to account on that and the regulator itself has to be held to account.

David Mendes da Costa: It is difficult to do things always by clarifying objectives or remits, because things change. The answer is probably discursive, and sits perhaps at a more operational level of regulators feeling that they are able to speak or report on things that lie just adjacent to their perimeter or their responsibilities. Sometimes, a regulator might get to the edge of where their remit is and feel that beyond that you have to be silent.

For things such as inclusion—in the sense of market inclusion—and affordability, much as the FCA reports each year on its perimeter, on firms that it does not regulate and where there are risks, maybe there is something to be said for regulators looking to report each year on issues

that lie just outside what it has power to look at but that actually have some bearing on the sector itself. Ideally, that would happen at a high level, with regulators speaking truth to power, as the committee put it in its questions. There is potentially a role for some kind of reporting, or a regular point for regulators to be able to give their view on what is going on just outside their perimeter and what should be handed over to government.

Q34 Viscount Chandos: We are running fairly short of time, so maybe you could answer as quickly as possible.

How do you think Parliament and Government can scrutinise regulators? Indeed, the regulators themselves do effective self-appraisal, but what do you think the impact of parliamentary scrutiny is? Do your organisations feel currently that Parliament is helping?

David Mendes da Costa: Parliament has a really important role, and Select Committees especially play a vital role in scrutinising regulators. The outcome that we want from regulators is that they act swiftly and effectively in the consumer interest. Parliament has a very important role in scrutinising whether regulators achieve both. On swiftness, Select Committees can be vital where regulators are failing to get on top of things. Where we have seen committees and Parliament step in is to essentially say that the regulator is not doing a good job on a particular issue and they need to sharpen up, and that can have a very strong effect on them. Ideally, you would not want to get to that point, but nevertheless that is a core role that Parliament has.

The other point is around effectiveness. It is critical that Parliament looks at the policies and the decisions of regulators to make sure that they genuinely solve the problems that they are looking to solve. Too often, we see half-solved problems and compromises, which means that today's problems become tomorrow's problems to solve, and tomorrow already has its own new problems that will need solving. It is critical for Parliament to make sure that regulators act swiftly.

Viscount Chandos: Is that not almost inevitable, Nicola, if the Select Committees are essentially reactive to problems, rather than there being a much more strategic and continuous involvement of Parliament, whether through the existing Select Committees or arguably through new bodies?

Nicola Smith: Parliament clearly has an important role to play in scrutiny. We urge that that is broad in its scope. If it is around labour market regulation, there is clearly a case for Parliament to ask how effective the existing infrastructure is at achieving its stated objective of ensuring that employment rights are enforced fairly and what that means in the broadest sense for how all regulators work together, for the roles of specific regulators, for resourcing, and for the wider change that regulators should be supporting or making the case for. We would see a case for Parliament taking a broad view of what effectiveness looks like for regulators, rather than assessing people on very tightly defined plans,

which, as I hope I have set out, we think are overly politicised at the moment and often too limited in their scope.

Q35 Lord Clement-Jones: First I need to make a declaration of interest. I am the chair of the Trust Alliance Group, which provides the ombudsman for energy and communications.

In your experience, are the roles and remits of different regulators sufficiently discrete, or is there overlap and underlap in their responsibilities? As we are running short of time, I will ask the second question at the same time. How effectively do regulators co-operate with one another, and how could this be improved? Perhaps I will start with you, Nicola.

Nicola Smith: We think there is a case for greater co-operation and for more joint working between employment regulators, as clearly there are areas of overlap such as those I touched on, and we know that data sharing is a problem because of that. If a workplace inspector or a minimum wage investigator goes into a workplace and they discover a holiday pay breach, they cannot take action because it does not fall within their remit. That points to the fact that individual regulators have very tightly drawn roles around which aspects of employment law they are able to look at. They can also be prevented from sharing information with each other, and often it feels as if that should not be as challenging to address as it is.

As I alluded to earlier, it is hard to understand why, if a regulator such as the CQC or another healthcare systems regulator goes into a workplace and finds egregious evidence of workplace malpractice, it can be quite so challenging to ensure that that is shared with someone else who might then be able to take regulatory action. There is a case for looking across employment rights enforcement and for thinking about the inconsistencies in which rights are enforced by named regulators and about some of the data-sharing challenges, understanding the extent to which those are real or ingrained in practice and looking at what, if they are real, needs to be changed to address them. It does not seem sensible that we have such siloed ways of working on problems that are often interlinked.

We think there can be challenges with data sharing, particularly between immigration enforcement and employment rights enforcement bodies. Sometimes that can be very clearly detrimental because it means that workers who are very concerned about their immigration status may feel that they do not want to, are not able to or do not have the power to report significant employment rights violations. There are cases where data sharing is not helpful to the wider objective. We think it needs to be looked at and there is clearly room for improvement.

Lord Clement-Jones: You would go for a bit of a rejigging, and see it in some ways as too discrete. Some have seen quite a bit of overlap, but in the area that you deal with, sometimes it is overly defined.

Nicola Smith: I would say so, yes. A larger body with more powers and better resources that is better able to look at employment rights in the round makes more sense. We know that where there is one employment rights violation, there are often more. I remember research by ACAS from a long time ago that went looking for minimum wage violations and found that, among the small employers it was looking at, there were violations of 70%, 80%, 90% in wider employment law at the same time. There is lots and lots of historical evidence of the extent to which one employment rights problem indicates more. If you want to improve compliance, you start from there and think about how you put a system around it, rather than siloing things into boxes that do not make a lot of sense when you look at what is happening on the ground.

Lord Clement-Jones: The data issue is quite a big deal in trying to get more co-operation.

Nicola Smith: It can be. We are told that it is. It probably needs a look to understand the extent to which there are real legal barriers to sharing information or the extent to which there is caution in practice and ways of working that have been established between organisations that could be challenged.

David Mendes da Costa: Generally, sector regulators have their sectors, and that is quite clear—although in some cases there are overlaps. An example that we are quite close to as a debt advice charity is some of the overlaps that exist between the Financial Conduct Authority and the Insolvency Service. If you think about it from the consumer's perspective, you go along to debt advice—probably FCA regulated, but possibly not—and then you go through into what debt solution you have. If you are going to pay all your money, you are looking at something regulated by the FCA. If you are looking at an insolvency, you are looking at something regulated by the Insolvency Service. As a consumer, it is very difficult to know exactly who the right regulator is, because you might be talking to the same person all the way through. In a sense, the biggest cross-cutting thing from our perspective is the consumer themselves: the same person interacting with lots of different markets that each have lots of different regulators, but what they really want is the same kinds of outcomes, processes and expectations.

Regulatory co-operation is vital, in a way, to ensure that there is something coherent that cuts across from the consumer's point of view, but it gets a bit complicated. Regulators can be quite good in some places at co-operating, although they are not always compelled to do it. The question is: where is the scrutiny? To take the FCA and the Insolvency Service, they each report to different departments: the Department for Business, Energy and Industrial Strategy for the Insolvency Service and the Treasury, and then they have two Select Committees. How are those bodies talking to each other? It takes only one of the chains to break and the whole system does not really work any more.

There is a case to be made for thinking carefully not just about regulatory co-operation but about how scrutiny operates of the places where the overlaps exist. That is essential from the consumer's perspective. It asks too much of the consumer to be expected to navigate wildly divergent regulatory approaches, wildly divergent expectations of different firms, and in some cases—we started by talking about complaints and where you go—potentially completely different complaints processes or completely different people they then need to report to on that.

There is a lot to be said for taking a step back and finding ways to look for some coherence and consistency. That is not to say that regulators have to move in lockstep, but the whole thing has to fit together in a way that makes sense to the end user, who is one person in lots of markets.

Lord Clement-Jones: I can see that you are an optimist.

Q36 **Baroness Bowles of Berkhamsted:** I remind the committee of my interests as a director of the London Stock Exchange, and therefore FCA regulated.

How transparent are regulators about their own performance, and is it easier to tell whether a regulator is performing well or badly, outside a crisis, where one might presume perhaps that there was something going on? To what extent can metrics be used to judge their performance in addition to qualitative evidence, and, if so, what should those metrics be?

I will put all the questions at once in the interest of time. What mechanisms could be introduced to allow greater scrutiny of regulators and the Government's role in setting the framework by which they operate?

Finally, I have an extra question that is playing on my mind. It is particularly relevant in financial services, but it might be elsewhere. Post Brexit, we currently have a lot of actual legislation that does not just say what regulators should be doing in principle; it has quite a lot of nitty-gritty in it. To pick up on what David said about regulators having to be able to act quickly, regulators cannot act quickly when something is embedded in legislation, because it requires legislation to change it. Have you any thoughts about what kind of mechanisms might be possible and constitutionally acceptable in that area?

Nicola Smith: I can be quite brief. We do not think that there is enough focus on the accountability of regulators to the public. As I touched on, the Director of Labour Market Enforcement has not even published an annual report for any period after March 2020, and that was not published until mid-2022. Those are annual reports about an assessment of the enforcement of labour market activity. While I am sure that there are good people doing good work in that regulator, we have got to a point of transparency where the Government's own political agenda and the operations of that regulator are colliding to a point where we cannot even get an up-to-date report on what it has been doing. That is simply not good enough.

There should be very clear metrics for the ambitions of the regulator. We should be able to see the extent to which it is taking proactive action. We should be able to see its assessment of the evidence of non-compliance and a plan for what is going to be done about it. When we look at information we do have—for example, from the Employment Agency Standards Inspectorate—it shows us that there were 118 targeted inspections in the last reporting period. We have that information, but we have no real assessment of what it means for overall compliance in the sector, and again we do not think that is adequate. There are approximately 1 million workers working in that sector; 118 inspections across the year does not sound as though it is enough. There is no proper transparency around whether anyone has made an assessment of that and what it means for the effectiveness of enforcement.

It comes back to what I have been saying about structures, about governance and about reporting requirements that hold regulators to account for the extent to which they are actually achieving their ambition. That needs government action, and it needs a commitment to understanding regulation in its widest terms.

On your point about regulation, some of our affiliated unions have submitted evidence to us about this. In healthcare, for example, we had some evidence from Unite pointing to the fact that there has been a government commitment to reform of professional healthcare regulation since 2012, yet the reform of that regulation still has not taken place. We probably have a concern that these legislative changes are perhaps not always as high up the political agenda as they could be. That has very real-world implications for what is happening in the day-to-day regulatory practice that can make a big difference to people's lives, whether that is as a member of a regulated profession or as a member of a workforce for whom a workplace inspection of their place of work might make a real difference.

David Mendes da Costa: It is really important that regulators set out what they are looking to achieve, and that can include targets and the metrics and objectives that they have for the year. Once regulators do that, they will set out a business plan for the year. While there is transparency in the fact that the plan is published and that the metrics are there—often there are metrics in place—there is not always a lot of engagement prior to that on what will go into the business plan, and whether the metrics that have been chosen are the right metrics to deliver on good consumer outcomes.

It is useful to have metrics up to a point; it is useful to have data and it is good when regulators share that. But on the other hand, I am a little hesitant around metrics. In one sense, they are quite difficult; it is quite difficult to come up with a metric for what success looks like. If you are going to come up with it, it needs to be set out in a way that is outcomes-focused, not process-focused, looking at what outcome for the consumer we are looking to achieve as the end result. In that sense, that is why, as a consumer group, we would be very keen to have greater

transparency around the process of the setting of those metrics in order to scrutinise them and say, "Is this the right metric? Is this the right thing to be looking at?"

What gets measured gets done. If you are measuring the wrong thing, the wrong thing will get done. I would rather have no metrics than the wrong metric. On the other hand, metrics take us only part of the way. We have to always recognise that things change. Priorities might, rightly, change within a year, and overly holding a regulator just to metrics feels perhaps a little overly formal.

It is very important to judge regulators in a more qualitative way as well. The way we would look at it is around how well they are engaging with us. How far do we see that the things that we are raising go on into actual actions? That is not really a metric; it is a judgment. Those judgments can be brought to Select Committees and regulators. That is an important part of the process of interrogating whether a regulator is doing a good job as well. I would be wary of overly focusing just on metrics.

Q37 Lord Reay: Before I ask my main question, I want to ask you about the subject of whistleblowers. From your experience, do you feel that regulators have satisfactory procedures in place to investigate the claims of whistleblowers? Do they make use of those procedures, and are whistleblowers adequately protected once they have made their claims? David, perhaps you could kick off.

David Mendes da Costa: This is not an area on which we have a huge amount to say from the point of view of Citizens Advice. We tend not to have whistleblowers. There are definitely cases where I would love people to step forward from certain sectors. Without adequate protections, workers and people in businesses are less likely to do so. We wholeheartedly see the absolute need for strong protections around whistleblowers, but in our day-to-day work I am not sure that I have a lot to add.

Nicola Smith: We agree on the need for strengthened protections across the economy for people who are whistleblowing. As to whether individual regulators have the right policies in place, I do not feel that I can comment on that sufficiently today. I can certainly ask our affiliated unions, some of whom represent the workforce in some of the regulators that you will be interested in, whether they have views on that. It is an individual employer issue, and I am sure there is varied practice, as there is across many businesses.

Lord Reay: Do the regulators you have encountered have the necessary skills, culture, resources and incentives to carry out their functions? How important is leadership in operating an effective regulator? Do regulators have the ability candidly and publicly to speak truth to power even when their views may be inconvenient for the Government?

David Mendes da Costa: One worry that we have is about regulators becoming overburdened over time. Take Ofcom as an example. Having just received all the responsibilities of the Online Safety Act on top of looking at the spectrum, broadband, mobile, broadcast and post, its brief becomes wider and wider. The worry is that, as the brief gets larger, and often resources are not stepped up to account for the larger brief, issues might get prioritised down the list. That is something we worry about, in particular with our postal regulator hat on.

In some senses, it might just be a question of regulators being given more resources. In some senses, you wonder whether a regulator gets to a certain size such that you start to think maybe it makes more sense to break it up in certain ways. I am not advocating going around breaking up all the regulators, but in some cases there are questions to be asked. There is a balance, is there not, between the benefit you get in a regulator of shared experience between different properties and the need to prioritise within them? If you were to have a separate postal regulator, yes, you would lose some of the experience, but you would never see post deprioritised. You would only see issues within post prioritised. There is a case for looking at where some regulators have perhaps been given too wide a brief.

Nicola Smith: In short, we do not think that they have enough resources, and as a result they do not have the right skills and experience. I set out earlier where we sit against the ILO benchmark for the number of labour market inspectors relative to what is needed. There are something like 40,000 employment agencies operating in the UK, but we have 20 inspectors.

Repeatedly, the TUC and our affiliated unions have submitted to the Government and to regulators evidence of significant non-compliance and lack of enforcement with employment standards across a whole range of sectors, whether that is showing that one in 14 workers are not paid the right holiday pay, that there is widespread non-compliance in warehouses with a whole range of employment rights regulations, that more than half of gig economy workers in parts of the country in food delivery are earning below the minimum wage, or that there are huge amounts of false self-employment among parcel delivery workers. We repeatedly share that evidence and particular examples of it, and action is not taken.

Our concern is both that there is not sufficient resource to ensure that action is taken and that the knowledge and commitment to action are not always there in our regulatory structures. We have concerns that the appointments process is increasingly flawed, and I have set those out. There has been a loss of trade union expertise and knowledge, as well as a lack of political commitment to act on the evidence of problems when they are raised.

Q38 **Lord Burns:** Are there any lessons that the UK can learn from other jurisdictions in the areas that we have been talking about this morning?

Nicola Smith: I would say that it would be to properly resource its employment rights infrastructure, to recognise that there should be an integrated role for trade unions as social partners in decision-making, and to understand that effective enforcement of employment rights takes more than individual labour inspectors. It takes widespread collective bargaining across the economy and proper action to ensure that companies are responsible, through their supply chains, for ensuring decent standards of work for everyone they contract with. There are lots of other countries that do it better than us, and I hope that there is an opportunity for us to learn from them.

David Mendes da Costa: I am not sure that we have a huge amount to add on that question, but it is certainly something we are going to take away for our written evidence.

The Chair: That is some homework.

Thank you very much indeed for your evidence today. It is a very interesting perspective on the issue of regulation in the UK, which is indeed the inquiry that we are undertaking, so thank you for that. If there is any written evidence that you want to submit, please do not hesitate to do so. That completes the session today.