

Public Accounts Committee

Oral evidence: Principles of effective regulation, HC 176

Monday 14 June 2021

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Members present: Meg Hillier (Chair); Shaun Bailey; Dan Carden; Sir Geoffrey Clifton-Brown; Antony Higginbotham; Nick Smith; James Wild.

Also attended: Gareth Davies, Comptroller & Auditor General, National Audit Office; Charles Nancarrow, Director, National Audit Office; Marius Gallaher, Alternate Treasury Officer of Accounts.

Questions 1-88

Witnesses

I: Sarah Albon, Chief Executive, Health and Safety Executive, Sir James Bevan, Chief Executive, Environment Agency and Dame Melanie Dawes, Chief Executive, Ofcom.

II: Chris Carr, Director of Better Regulation, BEIS, Sarah Munby, Permanent Secretary, BEIS and Jae Samant, Director General for Market Frameworks, BEIS.



Examination of witnesses

Witnesses: Sarah Albon, Sir James Bevan and Dame Melanie Dawes.

Q1 **Chair:** Welcome to the Public Accounts Committee on Monday 14 June 2021. Today we are looking at the issues around regulation. What we want to consider is what makes good regulation, the various types of regulatory bodies in the UK, and how they interact with Government, decision makers, one another and, where relevant, consumers and wider society.

The National Audit Office has very helpfully published its key principles of regulation—a good practice guide, essentially. We are particularly interested to test those ideas with three of our main regulators today, and then we will be hearing from witnesses at the Department for Business, Energy and Industrial Strategy, so we have two separate panels. I would like to welcome our first panel of witnesses representing three of our leading regulators. We have Sarah Albon, the chief executive of the Health and Safety Executive; welcome to you. We have Sir James Bevan, chief executive of the Environment Agency, and Dame Melanie Dawes, chief executive of Ofcom.

Before we go into the main session, today is the four-year anniversary of the tragic Grenfell disaster. I think we would all pay our respects to the 72 victims, their loved ones, who are still suffering, and their neighbours left behind. It was a major failure of regulation. Dame Melanie, you were permanent secretary at the Ministry of Housing, Communities and Local Government when this tragedy happened. Given that we are discussing regulation today, I wonder whether you have any thoughts or comments, reflecting on it four years on, about what led to the regulatory failures that led partly to what happened at Grenfell.

Dame Melanie Dawes: Thank you for inviting me to this hearing, Chair. I want to extend my deepest sympathies to all those affected by the Grenfell Tower fire. Today is a terrible anniversary for those who lost loved ones and friends in that awful fire. As you say, the Grenfell inquiry is broadly looking into the fire and its implications, and I do not want to cut across that.

However, as Dame Judith Hackitt said in her review just six months after the fire, the regulatory system for building safety was not fit for purpose at the time of the fire. A culture had grown up in the industry of not respecting safety standards, and there was a failure of regulatory oversight, including by my former Department, for several decades before the fire. We can see the consequences of that for not just the community and those directly affected, but the wider industry and, indeed, ordinary leaseholders who are still grappling with the costs and the uncertainty created by the ongoing uncertainties around cladding.

For me, this does prove the importance of good regulation. Ultimately, in this case, this was about helping an industry to manage collective risks



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that no single company could be responsible for alone. I think good regulation would have meant we created accountability in that industry, rather than just published standards in isolation. I do think there are a lot of lessons to learn here. Above all, an independent regulator, the Health and Safety Executive led by Sarah, will oversee the new system that the Government is bringing in.

Q2 Chair: You were permanent secretary when this tragedy happened. Most of us would not think of MHCLG as a major regulatory Department. Could you summarise how you feel this slipped through the system? How was it that nobody really had proper oversight of safety in this sector?

Dame Melanie Dawes: I don't think my former Department saw itself as a regulator in that sense. I think my colleagues saw themselves as responsible for setting standards. Of course, Ministers agreed those standards; they agreed the rules, agreed the approved documents, and, from time to time, changed the overall legal framework with Parliament. I don't think it was explicit what that oversight was aiming to achieve, and there were not systems and processes in place for looking at what was going on in that industry—for whistleblowing and for seeing and understanding risk. Those are all things that you would expect a good regulator to do, and it is sometimes rather difficult to expect Government Departments to do them. That is why I think that one of the lessons is that regulatory bodies—for whom that is their bread and butter, and who are judged on that—are the right people to discharge these responsibilities, with, of course, Ministers and Parliament still setting standards and agreeing the overall policy.

Q3 Chair: Thank you for that. I appreciate that you have been called upon to give evidence to the inquiry, and I guess you may well again, given your previous role, so I understand that you perhaps cannot say everything to us today, as you will be giving evidence to the full inquiry.

Melanie, Ofcom has been without a chair for some time—perhaps you could remind us how long it has been. Could you give us an idea of the timetable for appointment, after the first failed appointment process for the chair of Ofcom?

Dame Melanie Dawes: We do have an acting chair, Maggie Carver, who is doing a great job of leading our board and Ofcom. Lord Terry Burns stepped down as our formal chair on 31 December. I am afraid that I don't know any more about the timescale—that is a question for Government—but I hope we will find out more about it in due course.

Chair: So you are as much in the dark as the rest of us. I am sure that we will be keeping an eye on that, along with our sister Committee, the DCMS Select Committee. Thank you very much indeed for that.

Q4 Sir Geoffrey Clifton-Brown: Good afternoon, everybody. I turn first to Sir James. On the Treasury minute to our PAC report HC 931, I am sure you are aware that the Government disagreed with our recommendation that the agency “should have a duty to maintain flood defence assets” on the basis that “This would cut across the decommissioning and



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transferring of low benefit/cost assets in line with the maintenance protocol and implementing coastal retreat policies. It would also then prevent the Agency from being able to maintain assets in a way that creates climate resilient places by removing" that discretion. The problem is that, unless you have responsibility for them, how do we know that they will be maintained properly?

On the things that you do have responsibility for—main rivers—many of my constituents on the River Churn below Cirencester, to give you an example, think that the agency's inadequate maintenance led to flooding around Christmas last year. Could you please comment on how, if you are not going to be required to maintain these assets, you will ensure that those who are responsible for them—local authorities, private sector, other Government Departments—maintain them properly? Otherwise, the risk of flooding increases, does it **not**?

Sir James Bevan: Thank you, Sir Geoffrey, and thank you, Chair, for having me with you again this afternoon.

I agree with the Government's answer. The agency does have powers to maintain flood defence assets, and it uses them. We have many thousands of those assets up and down the country, and I think that we are pretty effective, although we can always do better.

I would be reluctant to have a duty because that would make it very difficult for the agency to prioritise. We will always have limited resources, obviously, and we want to have a risk-based prioritisation approach where we go after, and ensure that we fully maintain and repair, as necessary, the most important assets. That is what we do. We have a very clear target for the number of assets that we want to keep in the desirable condition. That target is published, and we publish our performance on that every quarter.

We also seek, as far as possible, to ensure that there is no additional risk to communities when a flood defence needs maintenance or repair. As you know, many of our flood defences got a very bad kicking over last winter; we have repaired most of the ones that were damaged, and where we have not yet been able to put permanent repairs in place, we have implemented temporary provisions that will ensure there is no additional risk.

Q5 **Sir Geoffrey Clifton-Brown:** **How** do we hold your agency responsible for the main rivers you are responsible for maintaining, such as the Churn? My constituents' perception is that the level of maintenance isn't as good as it was five or 10 years ago. How do we deal with the assets you're supposed to **ma**intain?

Sir James Bevan: We are responsible for managing flood risks on main rivers and the coast—that's absolutely right. My point is that we have powers—and limited resources—to fulfil those responsibilities, and that we need to prioritise. As you know, we are a place-based organisation; we have colleagues based all over the country who work very closely with local communities, including those in your constituency. They're very good



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at listening to the local community's views, and if the local community tells us they are worried about a particular flood defence asset, we will do our best to address that promptly.

- Q6 **Chair:** I want to raise the issue of the River Lea, and I thank Hackney Council, my borough, for providing some very useful evidence that I commend to you on this matter. We've had big issues on the River Lea: very frequently, raw effluent is discharged into the river from combined sewage overflows. As a deterrent, the Environment Agency has the power to prosecute water companies, and a fine is paid for a breach of licence—but it is happening way too often. The river is a major local asset for people who live on it, such as boat dwellers, and for people who use it as an amenity; lockdown has underlined how important it is.

Do you think there is a weakness in the system, in that although you can fine, it keeps happening? What is going wrong?

Sir James Bevan: I know the Lea; I have visited it on several occasions and I'm very much aware that that is an issue for local people. We are working closely with Thames Water to do what we can to reduce the frequency and volume of sewage overspills after heavy or prolonged rain. As we have discussed on this Committee, the overall problem is that we have a Victorian inheritance of about 15,000 combined sewer overflows that are designed to put diluted sewage into rivers or coastal waters when it rains very heavily. That is clearly suboptimal.

Dealing with that is a long-term and extremely expensive process. Together with DEFRA and the other regulators on the water companies, we have a storm overflows taskforce that is looking at both short and long-term solutions. What we are doing in the short term, including for the Lea, is making sure that we have monitoring, which we have encouraged the water companies to put in place; we now have monitoring on more than 80% of the 15,000 overflows around the country. That tells us and the water companies much more accurately when, how frequently and by how much the sewer outflows overflow, and we publish that data for the public to see. We provide advice to the public about the conditions under which they may want to consider swimming in those rivers. Publishing that data is good because it keeps both the Environment Agency on its toes—and we try to stay on our toes—and the water companies on theirs.

- Q7 **Chair:** In practical terms, is the situation going to get any better as a result of that monitoring?

Sir James Bevan: It has already started to get better because water companies are better able to identify where they have a particular problem. Some of those overflows will spill more frequently than others—we know that. Where we see that—Thames Water, who are responsible for your part of the world, are a case in point—we will have conversations with the water companies about what they can do to address that issue and reduce the frequency of spills, and the volume being spilled. We've already had successful conversations with Thames Water and we're having similar conversations with other water companies around the country.



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However, the long-term solution is massive investment in a modern sewage system.

- Q8 **Chair:** Absolutely, and that is a whole other debate that we won't get into. I want to check one really important thing: the Environment Agency is getting this monitoring done, alongside the water companies, so you will know that during lockdown there were spots along the River Lea that were known for wild swimming, including Hackney beach—our seafront, if you like. But on a serious note, people were swimming there unwittingly, without realising what they were swimming in.

Different bits of the river belong to different people, and Lee valley regional park authority owns part of it. What are you doing to ensure that the owners of the waterways are aware of the latest monitoring and are required to put it in a public place near the water, not just hidden away on some website?

Sir James Bevan: We work closely with the water companies to make sure that they have monitors in place on sewage overflows, which more than 80% now do, and to ensure that the data is published online. We publish it: it is on gov.uk, it's available—

- Q9 **Chair:** That is all very well, but on a hot day, if you are thinking of having a dip in the Lea, you are probably not going to be looking online to see what the latest figures are.

Sir James Bevan: Well, maybe, but I would encourage people to think about looking online—it is not that difficult—before you leap into the water. If you go online, you will see both the latest information—

- Q10 **Chair:** Perhaps we are talking at cross purposes, because I think that most people would genuinely not realise that effluent is in the river that they are swimming in. Are you looking at placing a requirement on the owner of that waterway to put up signage?

Sir James Bevan: We would always want the owner or the operator of a particular waterway to have signage that indicates if there is a particular public health hazard. We do that ourselves where we own particular stretches of the river.

Chair: You have just given me a bit of casework; I will have to make sure that is happening across my section of the Lea.

- Q11 **Sir Geoffrey Clifton-Brown:** Again, Sir James, on the same subject of chalk streams and limestone rivers, that same evidence from the London Borough of Hackney quotes the figures, and the Environment Agency's own figures show that Thames Water discharged sewage into rivers in its area 18,443 times in 2020. Is that a figure that concerns you, and that you are determined to reduce?

Sir James Bevan: First, it is not a figure that I recognise, Sir Geoffrey, but it is a figure that does concern me, and it is a figure that we are committed to reducing in the way that I have described. There are also other things that we need to do to protect and enhance chalk streams. I'm



a fan, as you know; I live near a couple of chalk streams. In addition to seeking to reduce pollution that goes into chalk streams from sewage overflows from water companies, we are also working with farmers because, as you will know, run-off from agricultural land is another source of damage to chalk streams. We are also working to reduce abstraction—the taking of water from chalk streams—so that only sustainable abstractions take place. That is a difficult balance because, obviously, particularly in the south-east, there are quite a lot of public water companies that depend on abstracting for the public water supply—including from chalk streams.

- Q12 Sir Geoffrey Clifton-Brown:** The limestone streams that I represent are the Churn, the Windrush and the Coln, which, as you will know, people are very concerned about. Is there a problem here? You say you are working with the water companies—in this case Thames Water—and you regulate water companies, whereas Ofwat regulate water companies' investment? You said earlier that we are working with Victorian systems, which get particularly overloaded when additional development comes along; is there tension between what you do in regulating water quality, and what Ofwat does in terms of allowing water companies to invest to prevent these discharges?

Sir James Bevan: We might get into this in a later session, but I think there is good collaboration between the Environment Agency and Ofwat on both quantity of water—because water scarcity is an issue—and water quality. We work with Ofwat when they are framing and designing their five-year price review, which determines the amount of investment that water companies can put into the kind of infrastructure and interventions that we want. Ofwat have been very receptive to that process, and that has helped drive both better behaviour by the water companies—who suffer penalties if they fail on some of Ofwat's environmental indicators—and the kind of investment we want over the long term to address some of these issues for good.

- Q13 Sir Geoffrey Clifton-Brown:** The problem is that whenever I take up the issue of discharge to, or water quality issues with, these rivers, I always get back from the Environment Agency, "we're coming up with an action plan." The action plan tends to be some years away. A plan is a plan—action is what we want. How do we get rid of this perpetual procrastination?

Sir James Bevan: I think I would take issue with the suggestion of inaction. We do need to plan for the medium and long term, but like you, Sir Geoffrey, I am more interested in what we can do now to protect and enhance these fantastic streams. The Environment Agency is already doing a lot. As I say, if we identify a particular source of pollution in a chalk stream, we will talk to the source of that pollution—whether it is a farmer or a water company—and seek to ensure that it stops. If we think a farmer, water company or other business is taking too much water from that particular chalk stream, we will have a conversation about whether we can reduce the overall amount it can take under the abstraction licence it has from the EA. If we see damage to the chalk stream that has taken it



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away from its natural state, we will work with the landowners and other partners to remediate it.

Since 2016, we have had a programme of revitalising chalk rivers, which has brought back over 70 km of chalk streams into, pretty much, their original habitat.

- Q14 **James Wild:** Sir James, I want to focus on enforcement. We should welcome and find fair the £4 million fine that you secured last month against Thames Water—whose name has been mentioned several times—for allowing 79 million litres of untreated sewage to pollute a chalk stream and park. In recent years, however, those sorts of prosecutions have fallen. The test for discharge is exceptional use, and over the dry weekends we have had recently, there have still been CSOs discharging sewage into chalk streams. Why are you not doing more to prevent that and bring more prosecutions?

Sir James Bevan: Thank you for what you said about the Thames Water prosecution. We will always prosecute a water company where we believe it has caused substantial environmental harm, and where we do not see any mitigating factors. We have taken two prosecutions successfully this year—both against Thames Water. One was a £4 million fine, and the other was £2 million.

We have prosecutions in the pipeline against other water companies. It will always be part of our armoury, but we have a spectrum of interventions we use when we see risks around how water companies are behaving. At the softest end is advice and guidance, which is not negligible and can make a difference. We will see what is going on on the ground, and we will have a word with the water company in operation and see if we can get them to adjust what they are doing. If that doesn't fructify, we have tougher measures including enforcement action—a compliance notice giving a company a legal duty to take action, if we think action needs to be taken, up to and including prosecution.

Although it has been very difficult over the last 14 months, not least because the courts have been slowed by covid, prosecution is and will remain a major tool in our armoury.

James Wild: I think it would be helpful if you were able to share a breakdown of the prosecutions, enforcement notices and other measures you have taken in the last couple of years, so that we can see the trend. There is a good community on Twitter who highlight the CSOs that are discharging into rivers most weekends. What action is actually being taken when that happens is very unclear to people.

Chair: Better communication of the problem might be a small step towards tackling it.

- Q15 **Shaun Bailey:** Sir James, when it comes to flood response more broadly, how are you as a Department trying to ensure that we don't end up with a postcode lottery? I represent an area where the local authority is currently the lead local flood authority. We have high levels of



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deprivation, and it doesn't have the resources to follow through as expected in responding to these flood events. How are you ensuring that constituents in my areas, and others that flood and suffer from high levels of deprivation, are not losing out?

Sir James Bevan: We give effect to the Government's policy, which is to provide funding based on risk. We will be able to allocate funding for flood defence schemes and we will take them forward wherever there is a sufficient number of houses at sufficient risk to meet the criteria. All parts of the country benefit from that—deprived communities in particular. There is a weighting in the Government's policy that helps push money towards deprived communities, so they are more likely to get the funding than a better-off community.

If the formula does not allow us to fund the whole cost of a flood scheme in a deprived community, we will then work with the community, local authority, local businesses and other partners to see what we can do. Either we assemble more funding to top up what the Government can provide and we bring to the table, which is often the way we build flood schemes, or we design alternative schemes that will help reduce the risk without costing a large amount of money.

- Q16 **Shaun Bailey:** Just looking at that risk analysis for a minute, from some of the anecdotal feedback that I have had locally, am I right in thinking that your risk analysis takes in volume of houses as opposed to the frequency of flood events? One example that was given to me was a recent flood scheme, which had been turned down, that had 25 houses and was flooding every year. Then you went up the road to 100 houses that flooded once every five years and they are getting more funding than the area that is flooding every year. Can you explain from your perspective how that ensures effective management of risk? Surely there is a greater risk in the former, not the latter, in that example.

Sir James Bevan: The formula, which as I say is set by the Government not the Environment Agency, though we give effect to it, is a combination of identifying the core flood risk to a particular area—we have maps online that will identify very clearly what we think the relative flood risk is in any part of the country; just put in the postcode and it will give you the answer—and how many properties we are going to be protecting if we put in place a new flood scheme. Both those elements are driven by Government policy and sometimes may result in us being able to fund a scheme where there are a lot of houses, and not being able to fund a scheme where there are fewer. That is the debate that we have with the Government, and that you might want to have with the Government as well.

Chair: I hope that our other witnesses forgive us, but you can tell that Sir James is a popular witness. That is one way of putting it. I think you might get a flurry of letters as a result, Sir James, and we will perhaps invite you back for a separate session. We are always keen to have you. Thank you very much indeed for that. We now need to move into our main session, which is very significant because regulation affects so many people's lives



and rights. I am going to ask Sir Geoffrey Clifton-Brown to kick off.

Q17 Sir Geoffrey Clifton-Brown: Thank you very much. I think, sadly, I am going to stick with you, Sir James. We are working you hard this afternoon—sorry about that. It may be more for the Government than for yourself to, as we wrote in our report in July, “develop a national message to consumers on the need to reduce water consumption”. All of you can chip in on this question if you have a view. How do you ensure that your understanding of the views and behaviours of citizens and other stakeholders is reflected in how you regulate?

Sir James Bevan: It is really important for regulators to understand what their customers—both the public and those they regulate—want and need. The Environment Agency tries to do that. We engage very significantly with both the public and those we regulate on our regulation. We are transparent. We publish details on almost everything that we do, and as you can imagine we get a lot of feedback, all of which is welcome. We consult the public when we are taking individual regulation decisions that will affect them—for example, whether to approve a local waste incinerator—and we take heed of what the public say and will often adjust the final decision that we make in the light of what we hear.

Wherever there is an issue of concern—a waste site or sewage overflows, which we have heard about—we will attend public meetings to listen to views, answer questions and, as necessary, take action. Since we are talking about water, we recently trialled a new initiative where we are running what we call citizens’ juries focused on water quality up and down the country, which have enabled us to have rather detailed conversations with a representative of a proportion of the general public. That has helped us to understand a bit more what the public think and need.

In terms of those we regulate, we have consultations with them at a strategic level. We have a regulated business forum, which engages with all the trade associations from all the major sectors we regulate. We have forums for each of the sectors—water, waste and energy—which have similar conversations, and at local level we will consult and listen to the operators of all the individual sites that we regulate.

Q18 Sir Geoffrey Clifton-Brown: Sir James, in case you think I always ask critical questions, may I congratulate your staff on the way they do turn up to public meetings in my constituency? It is much appreciated. Do any of the other regulators have a view on how the behaviours of citizens and other stakeholders—industry, for example—are reflected in how you regulate?

Dame Melanie Dawes: Perhaps I could come in, Sir Geoffrey. For Ofcom, this is a really important part of what we do. We always try to start by understanding what is going on in our markets. That is partly about what consumers think about the services they are getting, but it is also about where commercial developments are taking the offer that consumers are getting. Technology is absolutely driving new services all the time, especially in broadcasting and telecoms. How do we do that? We do it



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through research. We have a number of annual set pieces that we do. We published one last week called “Online Nation”, where we are looking essentially at what we are all getting up to online and how much time we are spending online. I am sure some of you may have seen that report last week.

We also look at specific regulatory issues. Last year, we ran a big research exercise using a number of different techniques. We try to get a sense of what the public think about public service broadcasting at the moment, why they value it, and what they think about matters, and we have used that to form some ideas and recommendations, which we will be finalising for the Government this summer, on how to adapt the regulatory system for the future. We use a number of different techniques. We take complaints as well, and sometimes we run campaigns with the consumer, to get alongside them, particularly on things like telecoms and helping people stay connected during the pandemic.

Q19 Sir Geoffrey Clifton-Brown: Thank you, Dame Melanie. I suppose it is only fair to bring in Ms Sarah Albon. Do you want to talk about what HSE is doing, in terms of taking its stakeholders and citizens’ views into account?

Sarah Albon: Thank you, Sir Geoffrey. I won’t repeat what my two regulatory colleagues have said, because we use very similar techniques around consultation. The only thing I want to add is that it is also important to understand that sometimes the people you are protecting in your regulation are very clearly and separably identifiable—for example, you were just talking about particular flooding in particular areas. Our equivalent might be work with a particular company at a particular site, and our inspectors will talk directly to the members of staff, as well as to the business, about the particular issues on that site.

More generally, we also need to think about separate groups of stakeholders in different industries. We might work with the oil industry and various representative bodies when we think about regulation of the North Sea basin, as well as working with other regulators to make sure we are hearing the views that are coming in as widely as possible.

We also use public consultation. The other thing—I think one of your colleagues mentioned Twitter—is that we also spend time just listening to what people are saying to us unprompted, and use that as a place to start questioning ourselves about whether we are looking at the right areas and whether there is rising concern in a particular area or jurisdiction that we should take account of.

Q20 Sir Geoffrey Clifton-Brown: Could you give us an example of where, having listened to those views, you have actually changed the way you have regulated? I am going to ask the other two of you as well, but let’s start with you, Ms Albon.

Sarah Albon: I would be happy to write with a more detailed follow-up, but we have some very intractable levels of continuing accident and incident in the agriculture industry. We have a very, very safe overall



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system in the United Kingdom, but agriculture is one of those areas where, persistently, the numbers of deaths and serious injuries are higher than in some other sectors. They are not from causes which aren't well understood: people are crushed by their livestock, or they fall off tall buildings when they haven't got proper protection up. It's things that people understand.

We were interested in trying to understand what is failing to get through to people about the incredibly awful consequences for often family businesses, and for the rest of family, if an important loved one is killed in the course of action. It is not just all of the awful economic impacts; it is the guilt and all of those things that flow, particularly in a small firm or a family firm, if a member of the family is killed while at work, and often, of course, in the place where they live.

We worked with the NFU and with individual farms to understand why our messages don't get across, and to really understand the different types of ways that people hear when we speak. We use the same message to everyone, but they do not hear the same thing—sometimes it just passes over their heads, some people are too busy, some just don't want to engage, some think it will never happen to them—but through understanding more thoroughly that different type of audience, we were able to design a very different package to go to farms and farmers and try to talk to them about the kinds of issues that might be there.

That helped us design different communications and letters. As I say, they were not groundbreaking new ways of keeping people safe; they were different ways of getting through to people about the risk. We had very good uptake, good results and good levels of understanding, which we got by going back to that same group of people and saying, "How has this worked?"

Q21 Sir Geoffrey Clifton-Brown: Being a farmer, I understand the problem. In your opinion, in a very short answer, have those messages got through and reduced the number of deaths and injuries?

Sarah Albon: Yes, although clearly it has not cured it. There are still some intractable people to get through to, but it has made a difference.

Q22 Sir Geoffrey Clifton-Brown: Okay, thank you. Dame Melanie, do you have any good examples of how you as a regulator have altered the way you regulate as a result of views from citizens and stakeholders?

Dame Melanie Dawes: Yes. We do regular broadcasting research on what the audience is thinking and on attitudes to things such as offensive language, where we see views change over time. We keep that updated and, in fact, we are doing that at the moment. That directly affects the way that we then interpret complaints under the broadcasting code.

We also did research—I referred to this last year—to try to get under the skin of what viewers and listeners value about public service broadcasting. One of the things that that drew out, which I do not think we would have got through another route, is that British content—reflecting our country



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and how it is in all its glory in all our communities—was the thing that people really valued and could see was different in what they got from ITV, Channel 4, Channel 5 and BBC, compared with Netflix, Disney and so on. That has directly affected the way that we have shaped our recommendations to the Government, although in the end, the decisions will be for Ministers and Parliament.

Q23 Sir Geoffrey Clifton-Brown: We will come on a little later to your new duties in relation to online platforms. Sir James, very briefly, because we are going on too long, are there any specific, good examples of how you have changed your regulations?

Sir James Bevan: I would say energy from waste incinerators, which are very controversial but essential. Whenever there is a proposal for one, the EA is asked whether it will grant a permit to operate. Our consultations with local communities have been an opportunity for us to convey to them that we will not grant permits unless we are satisfied that the incinerator will not pose a threat to human health or the environment. We have listened and adjusted the terms of the permit when we have decided to grant it, to take account of the concerns. Most people are worried about health and amenity problems—traffic noise. In several cases we have agreed with the operator adjustments to the operating arrangements—a higher chimney, for example, which would satisfy people on health grounds, or particular limits on traffic movements, which make life much more liveable for local communities.

Q24 Sir Geoffrey Clifton-Brown: Sticking with you, Sir James, you are probably aware of the Government's White Paper, "Regulation for the Fourth Industrial Revolution". How are you improving collection of data? You need an awful lot of data, as we have already talked about. How are you using new technology, be it AI or whatever, to use that data to regulate better, make better decisions and do it quicker?

Sir James Bevan: One example would be the issue we were discussing earlier: the production and putting online of data about discharges from sewage outflows. I think that has a good effect, as I have said, both on the company and on us, and ensures that the public are well informed. Everything we do is driven by data—the terms of every permit for a waste operation or a water company, meaning what we will allow those operators to do, are determined by careful analysis and data. The monitoring and overseeing of how that operation works is driven by data. Decisions that we make, including about the enforcement action that we were discussing earlier, are driven by data. Some of it is collected in a very traditional way—boots on the ground. It is important to have real people on the ground, talking to the operators—I think that is reassuring to local communities—but increasingly we are using more sophisticated technological means: drones, remote monitoring, satellite data and aircraft, all of which help to build the body of knowledge on which we take decisions.

Q25 Sir Geoffrey Clifton-Brown: Dame Melanie? I am not only interested in the examples. Right at the end of that answer, James came up with some



of the new technologies he is using. How are you using new technologies to improve your regulation? You are in a very fast-emerging industry, so it is necessary for you to adapt and change quite quickly, I should imagine.

Dame Melanie Dawes: Yes, it is. In fact, technology is driving so much change in our sectors, and actually is driving much better offers for the consumer all the time, but it also creates new regulatory challenges. We are having to invest, like many others, in data analytics. We expect, particularly as we move into regulation of social media platforms, that we will need to develop the capability to analyse—or get others to analyse for us—vast quantities of data, to make sense of them and to draw out patterns and lessons and important points and so on. We in Ofcom also constantly need to understand how technology is being used to drive services. I am thinking partly about telecoms engineering and all the expertise that is used by companies in that sector, but also about how products are created by the social media platforms. I am very glad that we appointed somebody from Amazon last week to be our new chief technology officer. That is the kind of experience that we need to bring into Ofcom for the future.

Q26 **Sir Geoffrey Clifton-Brown:** Sarah, how does the HSE use new technology?

Sarah Albon: It is twofold—it is both how we use new technology and how we think about regulating new technology. Some areas that we have been, and continue to be, most engaged with include working with business to understand some of the hazards that may be present in, for example, the use of hydrogen in the gas main as a replacement for natural gas. We worked with Jaguar Land Rover and others, looking at potential risks around batteries in new electric cars and under what conditions those could become hazardous. We are very interested in that sort of new and emergent technology and making sure that we stay ahead of the game and work in a way that supports business and wider communities to decarbonise and do the right thing in a safe way.

Thinking about how we use new technology, I suppose what I will talk about is not really new technology, but we have just started—covid has pushed us to do this much more quickly—to look at how we can use technology to support really efficient use of our resources in a regulatory space. For example, as we started to roll out spot checks looking at covid compliance with business, initially we were using a lot of telephone and remote technology, but we have started working to see how we can use video technology in business in order to have very specialist, high-tech structural engineers, mechanical engineers and those kinds of people to look across a wider range of different sites without having to physically travel all the time. We are really interested in how we can do more of that.

I think we always think that there will be an important element of just turning up and seeing how it really is on the ground, but if we can augment that and support it with digital and other technologies to help our inspectors use all the resources available to them as efficiently as possible,



I think that would be best for those who are regulated, as well as for us and for those whom we protect.

- Q27 **James Wild:** One of the principles that the NAO draws on is adopting a forward-looking approach to regulation. Starting with you, Sir James, what changes do you all expect to see in your sectors that will create the biggest regulatory changes? Perhaps you could list two.

Sir James Bevan: There are several really big drivers right now. Covid and the economic crisis is driving the need for rapid growth and calls for the removal of red tape, which is a good challenge. Brexit means that we are free to set our own environmental rules. That is a big opportunity. The Government's ambition that we will be the first generation to enhance the environment, rather than degrade it, has raised the bar, rightly. There is popular pressure—we were discussing it earlier—for a cleaner, greener world; an example is wild swimming. That is a good challenge, too. And the climate emergency itself is the biggest of all the challenges that we face. So there is a whole bunch of drivers.

In terms of challenges, I guess I would list three. One is to keep pace with change. We have already started to talk about that—rising public expectation and staying ahead of the curve on technology. Another is funding. You get the regulation and the outcomes that you pay for, and there are challenges not just for the EA in terms of how we are funded. I think the most interesting challenge, though, is consent—social and political consent. A bit like the police, regulators ultimately can do their jobs only if they have the consent of the public. And regulation is a trade-off between freedoms. It is the freedom for a business to do something that will have a benefit but which might also cause harm, versus freedom for society from that harm, which may require some restriction on the freedom of the operator. Where you set the boundary on that spectrum depends on the issue and how much risk society wants to take. And that shifts. The storm overflow issue that we were talking about earlier is a good example. Public consent for combined storm overflows has manifestly diminished over the last few years, and that is forcing—rightly, I think—all of us, Government and regulators, to start to rethink how we are doing that particular bit of regulation.

- Q28 **James Wild:** Could I come to you, Dame Melanie, with the same question?

Dame Melanie Dawes: Let me give you just two examples of what I believe is our biggest challenge in Ofcom, and that is managing the disruption from technology to the business models in our sectors. As I said earlier, this is a very good thing in many ways, but it also means that, as a regulator, we have to be absolutely on our toes all the time. I will give two examples of how that manifests itself. In broadcasting, the entry not just of the big American streaming giants—Netflix, Disney and so on—but of the platforms and new technology means that it is no longer automatic for our public service broadcasters to have prominence in our living rooms, so it is not always possible for their content to be discovered easily by the viewer. That undercuts the business model and means that we could in the



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future lose something that we really value, which is why we think the regulatory system needs to be updated. That is a specific example of a regulatory challenge we are facing right now and working on with the Government and the sector.

Another example is one that Ofcom has always lived with. It has always been important for us, as a converged regulator, to look across all of the communications sector, but that is just getting more and more important. The tech giants are now increasingly in our sectors. Interestingly, the company that is in most of our regulated areas is Amazon. We recently gave it a broadcast licence. Alexa is a form of voice communication. Twitch is a video-sharing platform that we are regulating. Amazon even operates in parcels. With that challenge of bringing in the tech giants comes all their financial might and, in some areas, monopoly power, which means that the competition issues are very significant. That in turn means we have to work very closely with other regulators in the UK and, in fact, overseas as well in order to do our job effectively.

Q29 James Wild: Just to follow up on that before coming to Ms Albon, how are you gearing up for your new powers? You are going to be taking on very significant new powers—subject to Parliament passing them—in terms of online harms and protecting the public from harm. How are you gearing up for that? How are you staffing up? Have you got the expertise? You have talked about the might of the tech giants. Is it going to be a fair fight? Are you going to have the resources to do this job effectively, which is what Parliament will ultimately test you on?

Dame Melanie Dawes: That is a very important question for us. The answer is that we are building on what are some good strengths already. I think that is why the Government has given the job to Ofcom. We have a strong legal function, strong economics and a strong background in using technology and commercial insight to guide our regulation, but of course we have to grow some new arms and legs, and technology and different kinds of skills in that area is one of those. I mentioned our new chief technology officer. We are going to need to build a function there around modern online technology and what that means for how industries grow and develop.

There is another thing that is going to be very important. This is partly about numbers, of course, and we have had constructive conversations with the Government about the number of additional people we need to bring in, but it is also going to require deeper collaboration with other regulators. You may want to come on to this later. I am talking about the digital regulation co-operation forum within the UK, but also collaboration with other countries that are trying to do this. These platforms are global, obviously, and there's a lot that we can do to join up and be wise to what other people are doing.

Q30 James Wild: Another area where Parliament is putting new duties on you is telecoms security provisions. Again, have you actually started recruiting for those key roles that will play such an important part in the security of our telecoms infrastructure?



Dame Melanie Dawes: Yes, we have started recruiting, and again, we have had good discussions with the Government about the numbers there. The other important thing to say about the telecoms security regime is that we will be doing this by working very closely with the Government, particularly the National Cyber Security Centre. We have a very collaborative working relationship with them and a memorandum of understanding so that we can share skills and experience.

This is one area of our regulation where Government will be pulling some of the levers and Ofcom will be pulling some of the levers. It is very much going to be a joint effort. I feel that we are well placed in that respect because of those partnerships.

Q31 **James Wild:** Ms Albon, which changes in the sector do you think will create the biggest regulatory challenges? I would also be interested in any comments on the increase in homeworking and the challenges it will pose to the HSE.

Sarah Albon: That is certainly one of the areas. I think, beyond homeworking, the general change in employment practices really starts to raise questions, and I think we would need to have a really good public conversation about the appropriate reach of a regulator. The traditional model for employment was that people left their home and went to premises that were controlled entirely by the employer, and it was reasonable of them to expect the employer to provide the right things and do the right things there. I do not think that anybody would necessarily want either their employer or the regulator to turn up at their house and have an opinion about whether or not their kitchen table or spare room is an appropriate office environment.

Nevertheless, it is also important that employers are not able to exploit their workforce by providing completely inadequate equipment or space for them to do their work properly. But it is not just homeworking; new technology and flexible ways of working mean that people work in all sorts of places where they once would not have done—whether that be coffee shops or on the go—so it is about understanding what an employer can and should be expected to do to keep the workforce safe and, increasingly, healthy. Again, covid has really shown us the importance of thinking about stress and mental health and wellbeing in the workplace, so we must understand where that fits into the regulatory framework.

Beyond that, as I have already touched on, there is a significant issue for us in supporting the green agenda and the decarbonisation of the economy with new types of potentially hazardous materials being used, such as hydrogen. We need to recognise that, as we move away from our old infrastructure, some of those old refineries and other plants will be increasingly less profitable but will still need to be managed safely as we need to rely on them. It will perhaps become more challenging for the owners of that infrastructure to invest appropriately to keep it up to scratch.



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As Melanie touched on in her opening remarks about Grenfell, we as HSE have been asked to take on the role of building safety regulator. I think legislation will be brought before Parliament shortly, and once that legislation is passed, we will take on a new role. The challenge there for us is to bring the undoubted expertise that my team have in regulation and in buildings and construction, but also to learn new skills about having a different relationship with those we are protecting. We are looking there at residents rather than employees, and we have to make sure that we understand the differences as well as the similarities in the new area that we will be regulating.

Q32 James Wild: Thank you. On the homeworking point, to what extent does HSE see its role as enabling the return to formalised workplaces and giving practical advice that employers can follow so that, as we lift restrictions further, we can get people back into city centres and get the economy moving again in those areas?

Sarah Albon: It is very much for the public health authorities to determine the level of overall risk involved in a pandemic and whether or not there are guidelines around things such as social distancing. We have been working throughout the pandemic to support business very directly to put the right kinds of safeguards in place and to give assurance to businesses and their employees that they are putting the right kinds of safeguards in place.

As one of my inspectors said, in her experience this is absolutely unique as a hazard that inspectors go to, because for many hazards the bosses aren't exposed, but here we have all been exposed. We have all got loved ones and family who have different levels of fragility.

What we have overwhelmingly seen from business is a real desire to get things right and wanting the kind of support and information that you describe. We have been working very hard directly with individual businesses, through our different web channels, and we have seen large numbers of people using our online information. There have also been talks to local chambers of commerce and other local business events to support business to have the confidence to know that they can do the right thing, work safely and get their business up and running again as soon as they possibly can. We all want to support business to do that.

Q33 James Wild: Dame Melanie, you mentioned the recent hire from one of the large US companies. Can you confirm and give reassurance that there are strong conflict of interest regulations in place? Such hires bring in people with industry expertise but could potentially create the perception of a conflict of interest, if not an actual conflict.

Dame Melanie Dawes: Yes, of course. It is essential that we are able to bring in people from outside the public sector, so I am always delighted when we can do that. Yes, we do have very strong procedures around conflicts, both for executives and non-executives in Ofcom. We apply those rigorously and they are all published on our website. We also have



very strong guidance on social media and all sorts of other aspects of working life.

- Q34 **James Wild:** Obviously, horizon scanning is an important function here, but one of the long-running issues is the loyalty penalty in mobile, broadband, insurance and other markets. The most recent update I have seen from the CMA highlighted that while 80% of mobile providers have signed up to help out-of-contract customers with those charges, Three UK has not. Is that still the case? What have you done to get them to engage and agree voluntary measures? If they won't sign up to them, what further steps are you proposing to take?

Dame Melanie Dawes: This is an area where we have made a lot of progress. Sir Geoffrey's questions earlier about data were a good example of how we use data from the industry to really quantify the problem. We couldn't have done it without that data. As you said, we had customers overpaying if they were out of contract, so we pushed the industry pretty hard on that and all of the major providers, apart from Three, have made a commitment in this area.

When I look across our Ofcom regulations on general equal fairness to consumers, particularly with mobile providers, I see that we have a mix of things that are statutory, where we put in a statutory underpinning, and things where we are relying on voluntary commitment. We always keep that balance under review. It is good to have the balance.

You can usually move faster with something voluntary, and we find that transparency and publication of data is a strong lever to get everybody to see what best practice is, and so on. We keep that sort of thing under review, but for the moment we are seeing how this pans out and we will report very regularly on it, so people can see if lack of engagement in this process creates a problem. It means that some customers are still paying more.

- Q35 **James Wild:** The CMA said that it was "significantly concerned" about this. Are you relying on the other companies that have signed up to this to inform other consumers? What role does Ofcom itself take in informing consumers about the approach that different businesses are taking?

Dame Melanie Dawes: We publish regular and very comprehensive data on this. That is always on our website so that people can see what is going on. We keep this under review and we discuss it with the CMA. These commitments came in relatively recently, so we don't want to leap to a judgment that we need to go further yet, but it is an important part of our work where we have achieved a lot, but it needs to be kept firmly under review.

- Q36 **Sir Geoffrey Clifton-Brown:** Can I come first to you, Ms Alban? Your particular regulator has a difficult balance in keeping the public safe and not being overly burdensome to industry such that they become uncompetitive. Could you tell us the particular challenges and opportunities leaving the EU has created for the HSE?



Sarah Albon: By far the biggest challenge and opportunity has been that we have become the UK chemicals regulator. As part of the repatriation of activity, the HSE previously took part in chemicals regulation across the EU as a member of the EU, but the decisions weren't made in the UK. The decisions are now made here and we are the UK chemicals regulator. We have had to staff up and gear up to do that, and I suppose the biggest challenge there has been probably for business, thinking forward about information that in the past they have provided to the EU and making it not too expensive or onerous on them when they need to provide similar information to us.

Obviously, that regime is in its relative infancy as a repatriated body, but I think it gives us the opportunity to move very swiftly. When we were part of the EU, I think we had a very good reputation both for doing our work thoroughly but expeditiously, and for perhaps taking on the lion's share in some areas of the overall work. I think that gives us potentially an advantage in enabling a swifter route to market for products coming into the UK.

More generally, there are some minor—relatively minor, anyway—regulatory things that we can do that are essentially deregulatory in nature. I am thinking about some of the older rules around display screen equipment. The equipment itself is probably hardly used anywhere, but the regulations remain extant.

I suppose more generally our philosophy of regulation is perhaps different. We are very much a goals-based, outcome-based regulator. We don't like to make too many specific rules about telling business what it must do. Rather, we work with business to set outcomes—the broad outcome here being, "Keep your workers and those affected by your work safe and healthy"—and provided that that business is able to show us that it can do that, we are not very much in the market of trying to second-guess how it should work and specifically what it should do, because we recognise that those people who are best placed to manage risk are those who are closest to it. Facilitating that way of working rather than spending a lot of time drawing up new lists of rules that people have to comply with will be beneficial for those we regulate and for the wider economy.

Q37 **Sir Geoffrey Clifton-Brown:** Dame Melanie, you're a regulator. What are the opportunities and challenges for you in our having left the ?

Dame Melanie Dawes: At the moment, it has not led to an enormous shift in our in our approach or remit. Most of the frameworks that we operate under—telecoms and also digital regulation—were reasonably recently refreshed, so we are starting off in quite a stable place and that creates real opportunity.

I would say that all the challenges we face as a regulator, which I was discussing earlier, are nearly all global in nature, so we are definitely going to maintain strong relationships with the regulators in Europe with which we have developed good partnerships in the past. I am meeting the Irish regulator tomorrow, for example, particularly to make sure that we keep



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close around those issues along the border, but also because they will be leading the digital regulation of some of the big platforms on behalf of the rest of Europe.

We have also set up a new partnership with the Australians, the Canadians and the US around social media regulation. Actually, everyone's very interested in what we are doing, because the UK is going to be the first, pretty much, to put in place a regime that is as comprehensive as the Government's plans for online safety. For us, it is really less about a specific shopping list and more about a general, more international approach.

Q38 Sir Geoffrey Clifton-Brown: We have got that message; that is really helpful. Sir James, this doesn't need to be a long answer, but I imagine that your regulator hasn't been hugely affected by the EU—or has it?

Sir James Bevan: I think that the two big opportunities are farming—where we have an opportunity now that we have left the EU to junk the common agricultural policy and move to something that pays farmers for protecting the environment, which we welcome and are working closely with the Government on—and yes, regulation. Leaving the EU gives us an opportunity to improve how we regulate and to change the laws that we want to change. I can give you examples of EU-derived laws that I want to keep, EU-derived laws that I want to junk, and EU-derived laws that I want to reform. The touchstone for me should be outcomes. It is all about what will deliver better environmental outcomes and the risk-based, proportionate, outcome-focused regulation that Sarah was referring to.

Sir Geoffrey Clifton-Brown: I think the commonality between the three of you is that you are all stressing outcomes, which I welcome hugely.

Q39 James Wild: Dame Melanie, you have talked a number of times about the importance of collaboration in terms of delivering the new duties and powers that you are going to have. Can you expand a bit on how you see that working domestically? Are you talking about the CMA? Which bodies are you talking about, and what mechanisms exist, or you will be establishing, to formalise that, so that it is clear and transparent to people?

Dame Melanie Dawes: About a year ago, we set up with the Competition and Markets Authority and the Information Commissioner's Office, and we have since had the Financial Conduct Authority join us, so there are four of us now round the table, something that we call the digital regulatory co-operation forum. I am sorry that it is such a mouthful; we keep trying to think of a shorter name and have not succeeded yet.

What that is about is a much deeper form of collaboration than we have done before around our new digital regulation responsibilities. Why do we need to do that? First, it is about recognising that there are some things, like the use of algorithms or age assurance, where we are all trying to understand or do the same thing, and where often technical skill is quite scarce, so joining up is the right thing to do. That is about joint strategic pieces of work together.



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The second thing is that sometimes it will be right to do our regulation together. We are looking at the moment about how to take forward work on news publishing online with the Competition and Markets Authority. Actually, we have a strong track record of working with the CMA because we have concurrent powers with them. We are quite used to passing the baton between ourselves, depending on who has the right powers to achieve the same objective, but we think that we can do a lot more of this in future. Some of that might even be possible internationally as well.

The final thing is skills and capability, which obviously, particularly in the area of tech and data, it really does make sense to try to join up. In terms of how we will deepen that, we have sent proposals to the Government on changes that we think would help us, which make it more explicit that we have to have regard to each other's objectives and which allow us to share information—practical things like that that mean that we do not end up with legal boundaries that get in the way. The Government are thinking about those things at the moment.

Q40 **James Wild:** That is very helpful. Sir James, do you have some examples of where you have collaborated successfully with other agencies and bodies in order to deliver the outcomes?

Sir James Bevan: Sure. I will give you one operational and one policy. The operational—this is not just because Sarah is on the panel—is the Health and Safety Executive. We and the HSE regulate what are called COMAH sites: big industrial operations that handle or produce dangerous substances, like chemical plants and oil refineries. We and the HSE jointly regulate those. The HSE regulates activities that could hurt people. We regulate things that could harm the environment. Often they are the same things, so we work very closely together on assessing individual sites, often with joint inspections, and on the measures that we require the operators to take to ensure that they comply with the regulations.

On policy, there are two other water regulators, as you know: Ofwat and the Drinking Water Inspectorate. We work very closely together. I think the EA has worked particularly well with Ofwat, as I was saying, to help to shape Ofwat's five-year price review framework. For example, through that we have agreed with Ofwat and the water companies how much money the water companies will spend over that period on protecting the environment—it is about £5 billion, so a big ticket amount—and what specifically they will do with that money. That will have huge benefits for the environment.

Q41 **James Wild:** Dame Melanie talked about some, presumably legislative, proposals around information sharing and a duty to co-operate. Are there any other barriers that have not been mentioned that either Ms Albon or Sir James would like to put on the record?

Sarah Albon: I am not sure if this is a barrier, but there are always issues around data and data sharing. It can sometimes be the rules themselves around what can and cannot be shared, but it is often about the practical understanding of what data each other has that could be of use.

We are looking to create—I believe the funding has now been agreed—a data-sharing hub for regulators, starting initially by looking at some of those who are interested in regulating areas around employment. We are sharing the kind of data that we might have about businesses that are doing the right thing and that are doing the wrong thing, in order to create a single point where a number of regulators can go to understand each other's operations and data, and information about the good and the bad with business.

It is often the case that it is not necessarily that people are not willing to share, but they do not know what each other has. Creating single points of data source, and single points of reference, can really help both the regulators and those who are regulated, who would increasingly be less likely to need to provide information of a very similar nature to multiple sources.

- Q42 **James Wild:** Obviously there is an international dimension, particularly for telecoms, around spectrum policy, roaming and other interoperability. How is Ofcom going to be stepping up its international engagement? You have mentioned the upcoming meeting with the Irish Government, but do you see that as an important part of your role, when you have a chairman of theirs as well?

Dame Melanie Dawes: It is a very important part of our role. I have been very struck—I have been in Ofcom for 15 months now—by how well respected my colleagues are internationally. I met the new head of the Federal Communications Commission a couple of weeks ago, and we talked with my colleagues about spectrum management and some of the common challenges, particularly on non-geostationary satellites, which is the issue of the moment, because they require a lot more co-ordination to avoid interference than geostationary satellites that are fixed and much further away from the Earth. That is ultimately going to be about agreeing international standards here; we do not want everybody determining their own standards at a national level. We have a strong voice in the International Telecommunications Union, and we will continue to use that.

- Q43 **James Wild:** Can I ask a broader question around the impact of regulation and the cost to businesses and ultimately, therefore, to consumers? To what extent do each of you capture the annual cost of the regulation that you are placing on the sectors you regulate?

Dame Melanie Dawes: We always consult our industries, so that we get everybody's views, and we do what we can to measure impact and evaluate. We are definitely stepping up our efforts there—since the Committee's recommendations to us a couple of years ago, in fact. That is important. Measuring costs and benefits is quite hard for regulators, because it is often quite hard to see what the counterfactual is and what would have happened if you had not acted. Sometimes you are reducing risk and there is not anything tangible to point to, but you are avoiding something that would have had bad consequences if you did not act. But the whole question of cost and benefit measurement is something we all need



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to keep leaning into. Evaluation is quite an important tool here, even though it is inevitably in arrears. I certainly want Ofcom to do more of it.

- Q44 **James Wild:** I did not hear a number there. I appreciate it is difficult, but even having an imperfect number is still a number. As long as it is consistent, it gives you a benchmark.

On the evaluation point, to what extent is Ofcom making use of post-implementation reviews to see whether the regulation that you have imposed has actually had the desired effect and, if not, how to learn from that in the future?

Dame Melanie Dawes: We published two evaluations in the last year. One, just a couple of weeks ago, showed that some of the changes we made to telephone numbering some years ago had had the desired impact. We basically made 0800 numbers free, and that had been good—free to mobile users where they had not been before—but we unbundled some of the other charges. We had hoped that that would improve customer understanding of those prices, but it does not seem to have had that effect, and we have seen some price rises that we think are in consequence.

We have published all that very transparently—essentially, a bit of a mixed bag of outcomes that came from the changes we made—and we are now about to launch a consultation on what to do. The market has moved on quite a lot, so some of the problems have declined a bit over time, but I hope it conveys a sense that we are transparent and open about where we have not got things right, as well as where we think we have achieved successes.

- Q45 **James Wild:** Briefly to Sir James, and then to Ms Albon, do you have a figure for the cost to industry of your regulation on an annual basis? Is that something you track?

Sir James Bevan: We do not have a figure for the overall cost to industry of our regulation, but we do have goals of ensuring that we reduce costs year on year to the different industries that we regulate. We assess any significant changes to regulation that we are going to make in terms of costs; we undertake business impact target assessments; we follow the better regulation guidance when we are doing that; and when changes have the potential to have costs or savings over a particular amount, we [inaudible] the regulatory policy committee for approval.

- Q46 **James Wild:** Ms Albon, do you track it in a more systemic number system?

Sarah Albon: In some aspects of our regulation, we do. There are some very direct costs to some businesses of the HSE existing: in particular, I am thinking of the high hazard sites that Sir James mentioned, where our regulatory activity is hard charged to the businesses that are regulated on a kind of polluter pays basis. There, we know very precisely what the cost of our operations is and to whom they are passed, and we can track that. We can also track where there has been a failure by businesses outside of that fee recoverable area to do the right thing, and will look to charge on a



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polluter pays basis. We can send you numbers about the direct cost for the existence of HSE's activity: we look at that. We also do post-implementation reviews and things like that for regulation.

However, it is important that the Committee understands that more generally, a lot of the time, as I said, we try not to create regulation in the sense of "Here's a list of things that you as a business have to comply with." Businesses act under the aegis of the Health and Safety at Work Act, which puts an obligation on business owners to be aware of the risks and hazards that may be present in their operation, and to take proportionate action to keep those under control.

For most businesses, we do not know what their risk assessments are, what that has cost them to do or what they would have done differently, because we do not seek to interfere in the normal course of business most of the time. A lot of the—if you like—cost of doing the right thing is something that we would not necessarily know, but I would suggest that it is not necessarily cheaper than doing the wrong thing in terms of the value to business in maintaining itself as competitive, up to date and trusted. Overall, the UK position demonstrates that it is possible to have that very light-touch form of regulation and still overwhelmingly be one of the very safest places in the world to work.

Q47 James Wild: Under the Deregulation Act 2015, both the EA and the Health and Safety Executive have a duty to have regard to the desirability of promoting economic growth. I declare an interest: I was a special advisor in the Department for Business at the time, helping to draft that policy. Can you reassure me that that duty is properly formalised in your decision-making and your assessment before you come forward with proposals?

Sir James Bevan: The short answer is yes. The slightly longer answer is that we are looking at particular decisions right now—some of which you may be familiar with—where we are very conscious of the business impact of potential decisions. We are having regard to those potential impacts, and we are having conversations with the people who may be affected. In addition to that particular piece of legislation, [inaudible] makes clear that our fundamental purpose is not protecting the environment: it is promoting sustainable development, and we are very conscious that that needs to be part of all of our action.

Sarah Albon: Similarly, the short answer is yes. I think you will have heard from my evidence already this afternoon that, particularly thinking about the forthcoming green economy but also more generally, we are very keen to not simply help business keep costs down in the working world, but to really think in a future way about how it can bake in good, safe working with modern technology, so that Britain can continue to be a central hub for some of the new technology and some of the green agenda. That will be for the benefit of not only the UK but business and the ability to export that experienced, safe, green agenda going forward.

Q48 Sir Geoffrey Clifton-Brown: One brief question to you, Dame Melanie.



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We already heard that your particular regulator is highly dynamic, highly technical and international. You will need to recruit at the highest level certain international skills such as IT, analytics, broadcasting and so on. Do you have any difficulty in recruiting those skills?

Dame Melanie Dawes: Anybody who is trying to recruit those skills would say that it is difficult. If you are finding it easy, you are probably not going in at the right level. Our experience so far, particularly as we are thinking about gearing up for the online safety regime, is that people are very attracted by the mission and want to be part of it.

We are very pleased with the appointment of our new chief technology officer. A big part of his job will be to help us to build a bigger function there. Finding those skills will always be very high up our risk register, but I feel confident that we can do it, particularly if we work in collaboration with other regulators and other external organisations in all sectors, basically thinking really creatively and wisely about who has what skills and how we can deploy them to our work, even if we do not employ people directly.

Q49 **Chair:** A final question to Dame Melanie: you regulate the most internationally competitive sector of the regulators that we have on the call. You talked about the collaboration you are doing internationally. When you make a decision, some of the businesses in Shoreditch, which I represent, have footprints in a number of countries and could just decide to exit the UK and work from elsewhere. How alert are you to that? It is difficult to keep on top of. Can you give any examples of where you have had to temper what Ofcom has done to ensure that, while regulating for the interests of the consumer in the UK, you are not interfering overly in the competitive international market in which you operate?

Dame Melanie Dawes: That is a very good point. I am trying to think of an example but one is not coming to mind immediately. I would say that on the online safety regime, we are aiming for something that really improves transparency and accountability of what the platforms do. That should help them as well as helping their users and citizens more broadly, including parents who are concerned about the risks to their children.

We feel that there is a win-win here; it goes back to what I said at the very beginning—good regulation helps industries to manage their risks effectively and, as Sarah said, to do the right thing. That is what we are always aiming for with our regimes. But the tension you describe is an important and absolutely valid one.

Q50 **Chair:** You mentioned in response to Mr Wild that you collaborate with a lot of international bodies. Are you optimistic that that collaboration will deliver what each country needs? We have seen challenges about international tax, for example; these are similarly complex areas. Do you think that you may need more legislative authority to do some of the things that you are envisaging?

Dame Melanie Dawes: The Online Safety Bill was published a few weeks ago, and will go through pre-legislative scrutiny and then through

Parliament. The proposed powers in that Bill are the right ones: information powers, the ability to levy sanctions and fines and so on, and, fundamentally, a duty on platforms to do the things that really matter. We believe that we have the right clout internationally, if that is what you are referring to. I think the answer is yes. Why is that? Because the UK is very well respected as an economy and for our regulatory history. Ofcom is part of that, but when it comes to digital regulation, we are seen as cutting edge.

It is not just what Ofcom is doing; it is the creation of the Digital Markets Unit and the work that the Information Commissioner's Office has done in the last five or 10 years on data privacy again. That has pushed out beyond what many other countries have done. We are in a good place and we have just got to stay there and really put our backs into it. I am under no illusions about the challenges of regulating online safety, but I think we are as well placed as we can be to take on that challenge.

Chair: I thank you all very much indeed for your candid evidence. I am sure we will return to this area, and we will see some of you individually, depending on the areas of work that we are looking at. Sir James seems to have a season ticket to the Committee. When you have solved chalk streams, Sir James, you probably won't have to come for a while.

Sir Geoffrey Clifton-Brown: I'll be retired.

Chair: Sir Geoffrey is a bit pessimistic, but there is your challenge, Sir James. The transcript will be on the website uncorrected in the next couple of days, and we will produce a brief report in the next few weeks.

Examination of Witnesses

Witnesses: Sarah Munby, Chris Carr and Jae Samant.

Q51 **Chair:** Welcome back to the Public Accounts Committee on Monday 14 June 2021, where we are looking at what makes good regulation. Our second set of witnesses are from the Department for Business, Energy and Industrial Strategy. I am pleased to welcome Sarah Munby, the permanent secretary at the Department; Jae Samant, director general for market frameworks at the Department; and Chris Carr, who has the important role of director of the Better Regulation Executive at the same Department. I will come to you first, Ms Munby, on the use of data. Sir Geoffrey and I were reflecting that if we were paid £100 every time we mentioned data, we would probably be sunning ourselves somewhere, travel allowances allowing. However, data is pretty critical in assessing what is needed for regulation and making sure that they are doing their job properly. Do you have any thoughts about how data is being used, how it could be used more effectively and therefore what needs to be done in Whitehall to help to deliver that?

Sarah Munby: Absolutely. It is relatively parallel to the data question across the public sector in general—regulators are another example of the same thing. Everybody would agree that there is a huge opportunity here,



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both from each organisation getting its own house in order and from greater co-operation across organisations. You have already heard one good example from Sarah about the sharing of data.

Chair: Just to be clear, that is Sarah Albon, chief executive of the Health and Safety Executive.

Sarah Munby: She was talking about sharing risk data on the compliance or likely compliance levels of business. That is a great example, where you can immediately see the potential for data sharing. However, there are also examples that come within one industry. The energy industry is really pertinent here. The energy data taskforce, which was an independent group that reported on the opportunities for energy data to us and Ofgem, talked about the potential for a national energy data catalogue, which Ofgem is now taking forward; the presumption of openness for all data; and common structures for data across the industry.

It is not just about the regulator but how the regulator integrates into the wider industry. All of that will be reflected in the energy data strategy that we will be publishing later this year with Ofgem. Chris's team, partly inspired by that and partly following on from the work they have been doing over the longer term, are running a project on data openness across regulators, really looking to define best practice around discoverability, how you manage confidentiality and so on. We hope that will be another step forward in making sure that all regulators are taking their duties seriously.

The final thing I would add is that, across government, we are now operating under the auspices of the new Central Digital and Data Office, which is really working hard to bring all of this together across Whitehall. Regulators need to be seen as a critical part of that partnership, not as something outside on their own.

Q52 **Chair:** Mr Carr, Ms Munby highlighted one of the challenges. Take the Health and Safety Executive. You have lots of different industries perhaps holding on to data that has an edge of a commercial nature to it. How is it going, persuading people to share? How are you making sure that, when people share, they are not exposing themselves in a way that is unhelpful competitively but is actually boosting the opportunities for regulators to do their job?

Chris Carr: The regulatory data openness project is working with 25 regulators across eight themes. It grew out of the energy data taskforce, as Sarah said. It is particularly looking at exploring commercial confidentiality. A lot of data that is given to regulators is badged as commercially confidential, which is often an easy label to put on it, when quite a lot of that data could be shared quite easily. The project is looking, with the regulators, to try to improve the level of granularity that is applied to commercial confidentiality and to make most of the data discoverable and shareable.

The other approach to this is from one our regulator's pioneer fund projects, which I am sure we will talk about later, which is the creation of



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synthetic datasets. The Medicines and Healthcare Products Regulatory Authority did a project over the last couple of years to create synthetic datasets, which are modelled on real patient data and have the same incidence of health indicators but can be used and shared freely because they are not real, so nobody's privacy is infringed.

Q53 Chair: Can you just explain how that works? They are modelling it on real patient data. Can you explain how they created a synthetic dataset?

Chris Carr: I can send you the detailed project description if you like, but in summary my understanding is that algorithms are used to model the incidence of health factors in the real population and create a synthetic dataset that has the same incidence of health factors but is not linked to real people. You can then use those datasets to trial new products—digital AI products and so on.

Q54 Chair: That is quite interesting. How do you make sure that, when you are doing all this, you are not just adding burdens? One of the challenges when collecting data is that lots of organisations put their head in their hands and ask for something different from what another organisation is asking for, and in a way that is not collected. How in tune are you at the Department to making sure that both the Department and regulators are either asking for information that is easy to get or, indeed, helping those organisations, businesses and others to understand why it is important to collect it in a particular format, and giving them time to make sure that they can do that?

Chris Carr: That is a very good question. As Sarah said, the data standards—the form in which the data is expected—make a big difference to the level of burden that is imposed. We are working through this project to try to encourage regulators to use common data standards and to make it easier. One of the bigger issues that we face in the whole of monitoring and evaluation is essentially helping people to design evaluation plans so that they can collect the data as a matter of course, without the data collection being a burden that then impacts on the delivery of the service.

Q55 Chair: You talk about robust—well, we would certainly want it to be robust—monitoring and evaluation. Can you outline what the Department is doing to improve monitoring and evaluation, and what you think the barriers are? Too often on this Committee we see organisations not building that in from the beginning, and obviously regulators have a really important role in doing that in the work that they are doing. Can you talk through how you are delivering on that?

Chris Carr: The first thing to say, which I would say in any kind of opening remarks about regulation and regulators, is that one size does not fit all, and the landscape is very heterogeneous. All regulators have statutory obligations and powers. They produce annual reports and lay them in Parliament. They have framework agreements with their sponsoring Departments and delegation letters from the principal accounting officer to the chief executive, and so on. There are frameworks and agreements against which their performance can be evaluated, and as



a matter of good practice they should have monitoring arrangements for things like risk, and so on.

Specifically in terms of monitoring the impact of individual regulations, we use a system of post-implementation reviews, which is set out in statute and expected after five years or whatever review clause is in the legislation. Those are then scrutinised by the Regulatory Policy Committee if they are above the de minimis threshold—so if the regulation in question has an economic impact of greater than plus or minus £5 million a year. The Regulatory Policy Committee then produces an opinion on the quality of the evaluation.

Q56 Chair: When those opinions are issued, are they taken seriously enough in your view—maybe Ms Munby might want to add something—by the regulators, and can you perhaps point to examples where the Regulatory Policy Committee has made a recommendation and it has changed the way a regulator delivers something?

Sarah Munby: I am happy to speak to that. The examples actually, a bit like the one Melanie Dawes gave, tend to be relatively small—that is, they tend to be adjustments. It is not common for a PIR to come back and say, “This regulation is complete nonsense. Why did you do that?” I think that that is what you would expect. These are regulations that have gone through a really quite intense up-front scrutiny process, including being looked at by the Regulatory Policy Committee, and including being approved, right through the teams that work on them up to the Ministers. It would be a sign that the system was doing something wrong if we were finding that a lot of them were deeply and fundamentally wrong, but a number come back with: “Please adjust.”

Night-time hypos for drivers is a good example of where the regulation came back with: “Okay. Now change the way you’re doing this. This is too onerous.” There have been quite a few examples of where EU regulation has come back with: “You need to influence this piece of the puzzle more inside the EU community.” There are lots of adjustments. There are not many—in fact, I don’t know of any—turnarounds. I think that that is a reflection of a system where it is on the Department and the regulator to notice before five years if something fundamentally wrong is continuing.

Q57 Chair: So to summarise what you are saying, Ms Munby, you think that the sector is mature enough to do the work properly in the first place and to have this effectively light-touch second check on it. Is that a fair summary of what you have said?

Sarah Munby: Yes. You could certainly have a debate about whether it should be a bit stronger and whether you could do it a bit earlier, but it is not as though that is the only thing that we are relying on to drive improvements in regulation. That is what regulators do as their bread and butter, and these tend to be, as you have just heard from the previous three witnesses, pretty expert, well-informed organisations.

I think it is worth reiterating what Chris said at the beginning about the overall governance here. The Department has a very strong sponsoring



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function. So, if you have got a regulator where there are more profound problems than an individual regulation, you as the Department have a series of responsibilities and a cycle of reviews, for example, to make sure that governance is in the right shape. That is the process that we use fundamentally to make sure that the regulator is competent and skilled, to make sure that by the time the formal process comes round, big problems should have been spotted and stopped already.

- Q58 **Chair:** Governance is in the news at the moment with what has happened with Ofcom. I know that is not directly your Department, but these public appointments to the board are made through the relevant Government Departments for each regulator in most cases. Do you think that system works? There has been a lot of discussion about public appointments recently. Has there been any pressure on you in the Department to appoint any particular people to particular jobs? You may not want to name those jobs, but has there been any pressure on you?

Sarah Munby: We have clearly been around this discussion. Indeed, there is an ongoing court case around some of the appointments made during covid. I think these are very different cases. These are appointments that are made through open competition, with full processes, independent panel members, interviews, etc.

The final decision among candidates who are above the line lies with Ministers, but no candidate would be recommended to Ministers in the first place who we didn't consider to be absolutely competent, so it is not a question of undue influence, because the strength of the processing shows that only the right candidates are available for Ministers to choose from.

Chair: That is a very positive reading of things, but I will leave that for a moment and pass over to James **Wild**.

- Q59 **James Wild:** The fourth industrial revolution White Paper highlighted that statistically just under 30% of businesses felt that the current "approach to regulation supports them in bringing new products and services to market." That paper was almost two years ago, and I appreciate that various things have happened in between, but what progress has been made in the Department in developing the agile regulatory approach that supports innovation and protects citizens and the environment, which is talked about in that paper? Can I start with you, Ms **Munby**?

Sarah Munby: Lots, because we all recognise the absolute importance of this. Indeed, it has probably been the central plank of the work that we have been doing on regulation over the last few years, enabling innovation and innovative sectors to grow through regulation.

A few pieces of the puzzle: it is worth saying that in foundation this is a job for individual regulators. The question is, what do we bring beyond what individual regulators do? The first thing I would point to is where you have cross-cutting issues and specific sectors. We are looking at the regulatory challenge from a sectoral view, rather than just a regulator point of view, so it is not by stovepipe but looking at the issues across.



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That is what the Regulatory Horizons Council does. They have already published their report on fusion, which talks about how to regulate nuclear fusion in a different way to fission, because it has a different set of risk profiles. They have got a forward work programme, medical devices, drones, genetic technology etc. So, that is taking that cross-sector view.

The second thing is, how do we do a bit of encouraging of regulators to really take this point seriously. Before I go into that, I should start by saying that the UK has been really world leading in this space, particularly in the financial services arena with the work on sandboxes and so on.

The Regulators' Pioneer Fund, which Chris already mentioned, has just launched a new £3 million round. That is about giving regulators individual pockets of funding, specifically ringfenced to work on issues around fragility and innovation. There are some fantastic examples coming out of that, which we can talk about in more detail. To throw one into the room, the Civil Aviation Authority launched a sandbox through that process. As you can imagine, a sandbox in aviation helps you think about things like the drone industry and new forms of aviation. That has become permanent since the original funding.

The third piece of the puzzle is the work that we do internationally. Anything that you do domestically here, you are trying to understand how other countries are approaching the same issue and influence them. We have been a founding member of Agile Nations, which Jaee is very closely involved in and can talk to in more depth. All of those pieces of the puzzle are moving forward.

Finally, if you will forgive me, I will make just one more point, which is about innovating and modernising in the way we do regulation itself. For example, we have a programme that is about getting all the regulation into a machine readable format. That makes it easier for innovators. Let's say an innovator wants to start up a business that helps you as a small business to navigate regulation. We are creating the asset that will enable that business to grow. So, it is a case of going beyond just doing each piece of regulation in an agile and innovative way, and actually building a broader regulation industry around that.

Q60 **James Wild:** Thank you. Could I just pick up this issue? I don't know whether you or Mr Carr are best placed to answer on the pioneer fund. I think he mentioned the £3 million figure, which I guess, in the total operational costs of the regulators, is not even a rounding error. Is that sufficient? You mentioned that the CAA now have a sandbox. Obviously, the FCA and Ofgem—but particularly the FCA—have done quite a lot in this space, but should it not be the case that that is a default model for all regulators and that a challenge goes out to them to identify some of their own existing operational costs to fund sandboxes and other innovative approaches?

Sarah Munby: Absolutely, and that is how they are funded ongoing; the pioneer fund money is seed money. Chris, it might be worth explaining the



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slightly longer-term profile of the funding, because I was just talking about the latest round; that is not the first round.

Chris Carr: Thank you. The first round was £10 million and ran from April 2018 to March 2020 and funded 15 projects, of which 14 proceeded to completion. As Sarah said, one of the criteria for each project was that it had to show lasting benefits, beyond the duration of the funding. The second round was originally announced at Budget last year, but events overtook this due to covid and so the £3 million round that we launched on 10 May—a few weeks ago—is the current round 2, and that is a one-year fund to fund slightly smaller projects. Projects in the first round were between £500,000 and £1 million. Projects in this second round are expected to be around the £250,000 mark, so we can fund about 12 projects. Applications are currently under way and they close on 15 July. The projects must complete by the end of March next year.

Q61 **James Wild:** Ms Samant, I don't know whether you can add more of an international flavour. Who are we looking at in terms of the best practice across the world? Who is doing this well in particular sectors that we can learn from?

Jaee Samant: I think we are doing it rather well, for a start. That has been corroborated by a number of international organisations. The OECD ranked us highest overall in the world in their last "Regulatory Policy Outlook". The World Bank's "Doing Business 2020" report ranked us eighth out of 190 countries, and the only EU country higher than us is Denmark. And the World Economic Forum's "Global Competitiveness Report 2019" ranked us ninth out of 141 countries.

We have done a lot of work and we have been doing it for some years, so we have a bit of a history of sustaining international leadership on this. The reason it's really important is, partly, as you might imagine, that we learn from each other, but it is also really important for domestic growth. By working together with regulators and Governments in other countries, we can ensure minimal barriers to trade because different regulatory regimes are often quite significant non-tariff barriers. So, work is ongoing on a number of fronts.

I think you asked me, "Who does it better?" I think we do it very well, but there are a number of countries that do things differently. Interestingly, Denmark is very good. There are things from them that we are learning and watching. They have the Danish Business Authority, which actually does the work of a number of our organisations. It performs a sort of one-stop-shop function for all sorts of businesses, particularly emerging technology businesses. That is quite an interesting model, although obviously, if you were to seek to replicate it exactly as is, that would create quite a significant amount of structural chaos for a while until things bedded down.

We have also really been taking the lead with work on agile regulation generally. I chair, alongside Dr Roslyn Docktor from IBM, the World Economic Forum's global future council on agile governance. The UK has



also been one of the founding members of a group of seven nations that are really good at this—the agile nations network. Fundamentally, what a lot of that work is trying to do is to ensure that we can work to regulate sensibly, proportionately and quickly and be especially focused on emerging technologies.

- Q62 **James Wild:** Obviously I will have to look up the Danish example after the meeting: it sounds quite interesting. In the earlier session, we touched on co-operation and collaboration between different regulators, particularly in the digital space, where companies want to know who is responsible for regulation and what they have to be aware of. Is the Danish model a sort of front door where they then guide people, or does it bring together all of the regulators to look at those issues?

Jae Samant: They actually are a single organisation that contains a number of what would be disparate regulators and bodies in the UK, and they therefore serve as a sort of one-stop shop for businesses. It is a profoundly different model from the model we have here, but it is a really interesting and different one from which we could learn.

- Q63 **James Wild:** What lessons would you take from covid about responsive and agile regulation? We have obviously seen vaccines and other things approved—to the same standard but at a much faster rate than would have been possible in normal times. What are the key lessons that you have identified and that we should be looking to embed in our regulatory system?

Sarah Munby: The first thing to say is that I do not think I am going to say anything that we did not already know before the crisis. It emphasised lessons rather than created completely new ideas.

The first is one you talked a lot about in the previous session with the other witnesses, which is outcome over process. The MHRA is a great example of that. One of the things that really enabled the pace on vaccines was the fact that the MHRA were able to do a much more rolling review process that made things faster, frankly. That is just one example of being able to operate more effectively if you keep your eye on the prize of outcome not process.

The second thing I would highlight is co-operation across regulators, which again is a theme you have talked about already. A good example of that was PPE, where the approach was, “How do we make sure we have safe PPE?” There were several regulators involved in that question—our own Office for Product Safety and Standards, the MHRA, HSE—and they had a joint regulation co-ordination cell specifically focused on that issue, working together, indeed with a physically joint team operating out of the main NHS supply centre in Daventry. That was real co-operation across multiple regulators to deliver a—dare I say it?—customer-focused set of outcomes.

The final thing, which is easier to do in a pandemic than it is in normal times, is focus. One of the things that we did that really worked well was a cross-Government effort to identify and then deploy regulatory



easements, whether that was about how planning works for your table outside your restaurant or delays to deadlines for some things or rules about leave carry-over. There is a whole great long list of regulatory easements that have been deployed during the pandemic, and that was a mammoth cross-Whitehall effort, which I may say was fantastically coordinated by colleagues in BEIS. Why did that work well? Again, it was co-operation and outcome not process, but it was also knowing that that was the key thing to do right now. Every Department had an absolutely clear focus on what needed to be delivered.

I do not think there is anything deeply original there, but if we could keep that sense of focus, build even further co-operation and constantly remind ourselves that we are interested in outcomes, we will be in a better place coming out of the pandemic than we were going in.

- Q64 **James Wild:** That is interesting. As you say, some of those things are not that surprising but have been delivered. Why do regulators not have that embedded into their model and how they operate? They should have focus, be co-operating and look at outcomes over process. These are all things that any business has been banging on the door for a number of years saying that that is what they should be doing. Why do you think that has not happened, and how do we lock in those gains?

Sarah Munby: I think that has been true across the economy really, hasn't it? Just as you see private sector companies saying that the pandemic has suddenly made them realise that the investments that they make in digital are really worthwhile—or the investments they make in employee wellbeing—and they want to go further and faster, sometimes you know something but it takes events to bring it into sufficiently sharp focus. Co-operation is not new. You heard some good examples around Ofcom and the CMA and so on working together. There are lots of other examples of that around the system; it is just further embedding it and extending it.

- Q65 **James Wild:** Mr Carr, you have a lot of experience in this field. Are there any lessons you think we could draw to make sure that the lessons from covid are embedded in regulatory systems and structures? Is there something culturally that we can now alight on to make sure people get up every morning thinking, "How can I meet the outcome? How can I deliver it more effectively, and do I need to collaborate with someone, rather than the siloed approach to regulation?"

Chris Carr: It is a very interesting question. I think there is something about encouraging dialogue between regulators. In BEIS, we run a regulators forum and a separate regulators innovation network to engage regulators in different topics. We noticed during the crisis that actually convening regulators together with Ministers really helped to unblock things and identify needs to collaborate what might not have been there. As I am sure you are aware, ministerial time is very scarce, so it is not something that happens in a normal, non-crisis scenario, and perhaps it would be helpful to have more regular strategic dialogue to do that.



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Jaee Samant: Of course, a lot of regulators do this themselves very well and there is a UK regulators network which is mainly the 13 economic regulators. They did a really good job prior to covid but also during the pandemic, focusing on important things—for example, the issue of taking a co-ordinated approach to consumer debt caused by covid. There are things that they were doing already but which have been reinforced by the experience.

Q66 **James Wild:** I come back to the 29% figure in the White Paper. You have all said how well we do this, but obviously business has a slightly different perspective on bringing new products and services to market. Do you have an ambition for where you want that number to be in 12 or 24 months' time?

Sarah Munby: All I would do is put another fact in the room to go alongside that one. It is another one of the same statistics, which is about the number of businesses that believe that regulation is an obstacle to their success. In 2010, that was 62% and the latest number is 37%. That is still too high and we would all like it to go down. It will never become zero, because in every economy around the world there will always be businesses that see regulation as an obstacle to success. But that is a huge improvement over that 10-year timeframe and really says something positive about the journey we are on.

I will see if Chris has a good answer on the target for the metric you are talking about.

Chris Carr: I would like to see that figure at least double for the number of businesses that believe that regulations are helpful, or at least not a barrier, to bringing in new products and services. Ultimately, I would like it to be 100%, but I am not sure that that would be achievable in my lifetime. I am hopeful that innovations such as the Regulatory Horizons Council will make a real difference to how proactively and agilely we regulate in areas of new technology and new markets.

Q67 **James Wild:** I want to move on to talk about competition and regulation. The Competition and Markets Authority said last July, in its response to the reforming regulation initiative, that “there is insufficient prominence given to the impact of proposed regulation on dynamic competition and the process of innovation in...Regulatory Impact Assessments.” Can you outline what steps you have taken to address those concerns or what plans you have to do so?

Chris Carr: Competition policy is run in a different directorate by my colleagues, and they have a competition assessment that is overseen by the CMA and forms part of our regulatory impact assessment process. It is being improved and it is being worked on.

Today, the Government have published the report of the smart data working group, which goes back to our earlier conversation about data and will help identify opportunities for improvement. The whole of the regulatory impact assessment process is something that we keep under review, and we are currently in discussion with Ministers about the next



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set of announcements. The Secretary of State at the time—shortly before the 2019 election—committed in the annual business impact target report to reviewing the business impact target framework. That review was obviously postponed last year because of covid but will hopefully be launched as a consultation exercise later this year.

Q68 **James Wild:** Okay. So, do you acknowledge and accept the CMA comment that the integration within the impact assessment process needs to be improved to take account of competition and innovation?

Chris Carr: I do, but there is a countervailing desire to reduce the bureaucracy of the impact assessment process. It creates a lot of work for a lot of people, and just as we have to be careful about the burdens we place on businesses, we must be careful about the burdens we place on the policy-making process, so that we don't delay the delivery of the Government's objectives. There are tensions there that are being explored.

Q69 **James Wild:** It is surely Government policy to increase competition and innovation, so I am sure that a smart way can be found to address those concerns while having a manageable process.

Chris Carr: Yes. There is guidance in the Treasury Green Book and in the better regulation framework guidance and so on. The question is: "How much of an exercise do we need to have to make sure that people have done what they are supposed to do?"

Q70 **James Wild:** You mentioned the business impact target, which I was going to come on to in any event. You may have heard in the earlier session that I was asking about the cost to business of the measures taken by different regulators, and we can look at that in different ways. In my previous role, the business impact target may have been imperfect, but it was a target and something that everyone could operate against. You mention the review that has been announced. What is the timeframe for bringing forward that review? I think there was a WMS about that in December. Has it actually started?

Chris Carr: Yes. We are preparing a consultation document, essentially. The fundamental issue with the business impact target is not the fact of having a target; it is the metric that is used. The current metric penalises the Government for delivering its manifesto commitments, and I can give you a couple of examples. In the Gambling Act, the cost to the gambling companies was counted, but the crime reduction benefits were not. In the Tenant Fees Act, the cost to landlords was counted, but the benefits to tenants were not. The review was committed to by the previous Secretary of State in order to achieve, essentially, a better balance of counting, to ensure that the system recognises the benefits of regulation as well as the costs. That is quite a technocratic exercise. We need to consult economists, think-tanks and academics as well as business groups, so we are preparing the consultation document for Ministers to approve.

Q71 **James Wild:** Okay. It is helpful to clarify that. In terms of the cost of regulators overall and the value for money that consumers get from what



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are considerable fees, charges and taxes that go to fund regulators, how does BEIS look at that in the round to judge if we are getting value for money?

Sarah Munby: Ultimately, without wishing to suggest that we don't run everything, that is a question for the individual Departments and accounting officers who operate these regulators. This is linked to what you were just discussing. A lot of this is about doing good government work: ensuring that we have evaluation in place, ensuring that we have value for money, ensuring that we are not overly burdensome.

We don't have a full structure within BEIS for ensuring that every Department, with everything that it does involving regulators or regulation, is always doing everything exactly right, because that is what the structure of ministerial responsibility within Departments delivers. There are places where there might be a lack of co-ordination or a lack of understanding of best practice, and those are the places where we come in and try to support across the system. But the fundamental of whether a regulator is delivering value for money is one that you would expect every Department to have a strong perspective on and, indeed, all these regulators have their budgets reset every time there is a spending review and so on—all those processes that exist across Government for any other kind of money spending.

Q72 **James Wild:** Okay. That is actually a question I do want to ask. You mentioned that BEIS does not have this overview. In times past, there was a reducing regulation Sub-Committee of the economic affairs Cabinet Committee. What are the cross-Government structures? Is there a committee that is tasked with looking at the regulatory burden on business and identifying measures coming forward? That was previously based on looking at the business impact test and a forward look at regulations that Departments were planning to bring in. Does anything like that still exist?

Sarah Munby: Yes, there is a Cabinet Sub-Committee chaired by the Chancellor.

Q73 **James Wild:** Does that meet, or is it a write-around committee?

Sarah Munby: It meets. As you can imagine—we may come on to discuss this—it is fair to say that there is a question of what the future regulatory regime looks like. While there have always been a lot of important issues surrounding that, of course this is a bit of a moment for really thinking through that, because a whole load of new opportunities has been placed at the Government's table after leaving the European Union. The work that Lord Frost is doing out of the Cabinet Office on opportunities from Brexit involves really analysing what the potential changes are across the piece. So, yes, absolutely it is an active process.

Chair: There were some very interesting thoughts there. Talking of interesting contributions, I pass to Sir Geoffrey Clifton-Brown.

Q74 **Sir Geoffrey Clifton-Brown:** That is for others to judge, Chair. We have



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talked about sandbox regulation in terms of the FCA and other regulators, and we have talked about the regulators' pioneer fund but, Ms Munby, your Minister, the Business Secretary, has set up a ministerial working group on future regulation, which has six key challenges. Can you tell us how that group is getting **on?** Has it produced any positive recommendations to date? How do we stop it becoming yet another a committee that actually does not really do anything very **mu**ch?

Sarah Munby: Can you help me with exactly what you are talking about, Sir **Geoffrey**?

Sir Geoffrey Clifton-Brown: As I understand it, the "Regulation for the Fourth Industrial Revolution" White Paper says on page 9 that "The Business Secretary has established a Ministerial Working Group on Future Regulation to drive reform across government" and that it has six challenges to **add**ress.

Sarah Munby: Right, so I think that has somewhat been overtaken by events since then, not least as several new Business **Secretaries**—

Q75 **Sir Geoffrey Clifton-Brown:** So it has been **abo**lished.

Sarah Munby: As was just said, the key cross-Government forum for making this happen is the Cabinet Sub-Committee chaired by the Chancellor and the work that Lord Frost is doing out of the Cabinet Office. Those are very active processes, so I do not think having a separate duplicative structure within BEIS would be particularly helpful right **now**.

Q76 **Sir Geoffrey Clifton-Brown:** Okay. If you were setting up a new regulator, such as a gangmasters licensing regime, what type of regulation would you want to see? Bearing in mind that we are now looking at lighter-touch regimes, and that we are trying to encourage positive behaviour rather than stopping people doing things, what would be the criteria if you set up a new **reg**ulator?

Sarah Munby: Just to draw a slightly pernicky distinction, the difference between setting up new regulations and a new **reg**ulator—

Sir Geoffrey Clifton-Brown: I am talking about a new **reg**ulator.

Sarah Munby: First, there are a series of organisational, cultural and governance matters that probably sit in a different category from what you are talking about, which is how the regulations themselves should look. It is easy to say—of course we would say this and we do agree—that outcome-orientated and risk-based are the classic good principles of regulation, which have been embodied in the Regulators' Code and all the frameworks that currently exist across Government. Those things, of course, are absolutely true, but none of them are iron rules. Sometimes there are aspects of, let's say, health and safety where you do need a specific regulation about how high something needs to be or whatever. As a general rule, principles-based regulation, because of the role it plays in enabling innovation, is the better approach. However, that does not mean that principles-based regulation is superior in all **circ**umstances.



Q77 Sir Geoffrey Clifton-Brown: Ms Samant, let me come to you. Very interestingly, Sarah Albon said in relation to the HSE that complying with regulation did not necessarily mean additional expense, because the company might be doing things better than they otherwise would be. When you are setting your regulation and talking to the regulators, how do you encourage good behaviour? How do you drive innovation, and how do you drive new firms coming into a particular sector?

Jaee Samant: That is an extraordinarily difficult question and I am not sure that I could answer it brilliantly right now. May I write to you on that?

Q78 Sir Geoffrey Clifton-Brown: Of course. Can I bring you on to a more specific subject, the EU? Now we have left the EU—I think you were present or heard the previous answers from our panel—can you tell us how your Department, taking the lead role on regulation, is actually responding to taking over parts or the whole of those regulators? We heard about chemicals, for example, from the HSE. How is your Department reacting to those changes?

Sarah Munby: It is worth saying, of course, that is not just a BEIS phenomenon. There are regulators taking on repatriated functions from the EU right across the system. Overall, I think that the Government did a very good job in being ready, actually. They have really been successful in making sure that the frameworks, by and large, were ready to go.

It is probably best to talk about an example. The Office for Product Safety and Standards, which had to take on the role of logging, recording and communicating product safety notices and product safety recalls, is a really good example of the fact that some of the opportunities that come from owning our own regulatory system are not actually about the what—regulatory reform, taking out this regulation—they are actually about the how.

The system we have now, where local authorities or product safety regulators of one kind or another share data on what might be a risky product, is exactly the same function that existed across Europe. We now have a domestic version of that product safety database. Since we have had the domestic version, the number of inputs into it from UK regulators has gone up by about 600%; the reason for that is that it is easier to use, it moves faster, and we have been able to give people more assistance in how to do it. It is not some deep philosophical difference in how we think a product safety database should work—the principles of that are actually relatively clear and obvious. It is about making something that is modern and user-friendly, and really suited to the groups of people who are using it. That has had a profound effect.

I am not saying that would be replicated in every case where there are repatriated functions, of course it will not. But it is an example of the kind of practical opportunities that we should be going after. The MHRA point about a rolling review rather than sequential is a bit similar. It is not a fundamentally different regulatory philosophy—though there may well be cases where we do want that—it is about implementing the frameworks



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and the practicalities of the regulation in a way that makes life easier for everyone in the community.

- Q79 **Sir Geoffrey Clifton-Brown:** You are talking about product-based regulation. How are you resolving differences between EU regulators and UK regulators? I am thinking, for example, about phytosanitary inspections where the EU regime approach is different to our own. We take an intelligence, risk-based approach and they take a legislative approach. How are you going about resolving those difficulties?

Sarah Munby: That is probably different in every case, the type of example, if you see what I mean. In a lot of cases, there isn't a fundamental difference in what we think of as a safe plug, or whatever it may be. Actually, it is just about the operations that sit alongside that. Those are the cases I was talking about. For phytosanitary, I would have to come back to you because that is not a direct BEIS responsibility.

- Q80 **Sir Geoffrey Clifton-Brown:** Yes, but to go back to Mr Carr's point that one of the parts of regulation is not to put any excessive burden on Government organisations, how do you resolve that specific example I gave, in terms of phytosanitary inspections, where the EU expects us to have a significantly more all-encompassing regime than we would like to have on our own?

Sarah Munby: Clearly, there are some cases where, for whatever reason, it has come out in the package that we need to do things that we would not have done otherwise. There are lots of cases where we aren't. I think it is different in every case; I cannot give you a general answer to the question. Where we have an obligation to do something, we are doing it.

Clearly, in some of these cases, taking on repatriated functions has added costs to regulators; that is an inevitable consequence of taking on new functions. Our job is to make sure that we can deliver them in a way that is really effective and good value for money.

- Q81 **Sir Geoffrey Clifton-Brown:** Sticking with the EU for a minute, the EU had responsibility for trade policy. We now have responsibility for our own trade policy; we are going about the world making free trade agreements. But free trade agreements often have a conflict with regulation. How do you in the Department for International Trade work on those aspects of trying to facilitate trade but not coming up against barriers of regulation?

Sarah Munby: We have teams in the Department who work specifically on trade in goods and on trade in services, and they work very closely with the DIT teams on making sure that the relevant chapters, to use the technical term, take on board the needs of UK industry. Ultimately, it is for DIT to kind of draw the ring on where you make the trade-offs and the selections across the different chapters.

- Q82 **James Wild:** We have touched a bit on the fact that one of the successes during covid, in a sense, was the greater collaboration between regulators. We heard from Ofcom that it has put forward proposals and



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you have talked about the UK regulators group. Are you actively looking at legislative changes that could enable greater co-operation, or to what extent do you think this can be achieved by concordats or whatever type of informal agreement—a non-legislative agreement—between regulators?

Sarah Munby: Do you mean domestically between—?

Q83 **James Wild:** Yes. Sorry. Between domestic regulators, yes.

Sarah Munby: As a general rule, I think we would say that most of this can be achieved without legislative change, because you are really talking about organisations partnering well with each other. But of course there are some specific examples where that is not true. I mean, the announcement of the single enforcement body around labour rights is a good example of where the level of additional co-operation needed and—in the broadest sense—the economies of scale and scope that come from working together and better sharing are strong enough to justify making a real organisational change. So there will be a few examples like that, and we constantly review our portfolio to look for those options.

However, as a general rule, we think this is not a legislative issue. This is about messages, cultures and those sorts of things.

Q84 **James Wild:** Which comes back to the earlier question that I asked about how you embed that culture and make it continue as we move forward.

You mentioned departmental agreements, Mr Carr, and different budgetary mechanisms that exist. Would you see this as something that those agreements should address, or should there be some separate process within the chief executives' assessment and package that encourages them to deliver on this commitment?

Chris Carr: I am mindful of the Chair's earlier comment about having £100 for every time she has mentioned data. I think that if anyone had come up with a recipe for shaping and influencing culture, we would probably all know about it.

Yes, absolutely—framework agreements, business plans and other things can help to make sure that regulators have regard to these things. But ultimately it is going to do with the quality of leadership in the regulator itself that makes the difference, as well as the legal framework that supports them, the sponsoring support from the Department, and so on. I do not think there is a single solution that fits all.

Q85 **James Wild:** Just in more conceptual terms, do you think that there is enough focus within regulators on alternatives to formal regulation? There is a helpful chart somewhere in the NAO paper—the axis of interventions. Do you think the balance is being struck in the right place at the moment?

Chris Carr: I do not, but I do not think that is the fault of regulators. My team runs a sort of consultancy service, with workshops on alternatives to regulation for policymakers, because it is often the policy departments



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who choose a regulatory solution and tell the regulators to implement it. I am not aware that it has had that much influence in the other direction. Our work is focused on making policy makers more aware of the alternatives to regulation and helping encourage them to do that. The regulatory impact assessment process requires them to set out what alternatives have been considered and, if they were not chosen, why a regulatory solution was the best one.

Q86 James Wild: To what extent are the regulators free to decide how they work internationally, in terms of co-operation? To what extent does BEIS have a view on which bodies and groups they should be part of and enable that? How does that process work?

Chris Carr: Again, it is different for every regulator in every sphere. I would not presume to opine on what any individual regulator ought to do, but as you heard from my colleagues earlier, we do quite a lot of work internationally under the auspices of the OECD or the World Economic Forum. Again, we work with other nations to try to take down the barriers between regulatory regimes and to try to work on harmonising regulations, in particular to make sure that regulations for new products and services are as compatible as possible for those trying to create markets there. How that is taken forward by individual regulators is a matter for them.

Jaee Samant: Mr Wild, if you meant how British regulators work with regulators abroad, that will happen partly because they will want to have those conversations, but equally, when we as the sponsoring Department have our regular check-ins with our regulators, we do generally ask about how the international work is going. To give you an example, the Competition and Markets Authority has extremely good working relationships with competition counterparts across the world— CFIUS in the US, etc., and I would expect it to.

Q87 James Wild: Probably the final question from me is around the CMA and the annual state of competition report, which I think the previous BEIS Secretary of State and the Chancellor commissioned. When that report thuds on to desks, what is the role of BEIS and the Government if concerns are raised about market concentration in certain sectors? Where do you see the balance in terms of the Government giving encouragement and direction to regulators in certain markets to step forward and take further action to promote the dynamic competition that we have talked about previously?

Jaee Samant: The first assessment showed that competition in digital markets has deteriorated, but they are increasingly dominated by a small number of firms, etc. There are things that the CMA could do on its own, but equally, the Government will have to help it by setting a sort of strategic or legislative framework that facilitates and enables it to do its job effectively. You will have heard from Melanie Dawes of Ofcom about working closely with the Competition and Markets Authority and thinking about the set-up of the shadow digital markets unit, etc. There is a role for



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Government in setting the strategic and legislative framework, and then a role for the regulators in making it work effectively on the ground.

Q88 **James Wild:** And it is also legitimate for Ministers to give encouragement to regulators, to perhaps focus on some of their duties and powers they are given by Parliament, where perhaps they have been reluctant or have not engaged on topics sufficiently.

Jaee Samant: Indeed. Ministers do that, via the strategic remits that they set for the organisations and the check-ins that they have with the chiefs and the chairs of the organisation.

Chair: I thank our witnesses now and from the first session for their time. This is all general bread-and-butter work for the Committee. We will return to the issue of regulation both with the Department for Business, Energy and Industrial Strategy and with individual Departments, as we all can name examples of good regulators and ones that perhaps have been set up with a slightly heavy-handed approach. We will continue to watch that.

The transcript of this session and the previous session will be put up on our website uncorrected in the next couple of days. We will produce a report over the next couple of months, hopefully before the summer recess.