

*A slightly revised version of this article was published online in the Daily Telegraph 18/19 November 2025 under the heading How do you solve a problem like regulatory quangos? And with the subtitle There is a pragmatic solution that could address concerns more quickly and build trust*

There seems to be increasing dissatisfaction with regulatory bodies. But what is the remedy?

In the water sector, the Cunliffe report recommended that several existing bodies - Ofwat, the Drinking Water Inspectorate, and the water environment functions of the Environment Agency – be brought together into a single new organisation. But that just increases the scale of the regulatory challenge: it creates a super-regulator but doesn't in itself improve regulation.

Energy UK has argued that Ofgem has become “too big and bureaucratic”, resulting in increased costs for customers. It suggests that consumer-facing regulation should be taken over by the Competition and Markets Authority. I have elsewhere argued for this: the retail energy sector has long been competitive and has been held back by over-intrusive regulation which has been costly for customers.

But what about the monopoly parts of the energy sector, notably national transmission and local distribution networks? And most of the water sector?

In his recent article “Public utilities in Britain are in crisis” (*Financial Times*, 31 October 2025), Professor John Kay has a novel suggestion: “The role of regulators should be ... to ensure that the individuals who occupy senior positions have the relevant abilities and experience”.

But how exactly would regulators do this? And once these individuals have regulatory approval, is there no further need for regulation?

I suggest a different approach. Instead of the regulators taking all the major decisions, let them facilitate an informed discussion between the interested parties, and encourage these parties to negotiate an agreed way forward.

Kay gives a good example of the context. “A privatised water company requires effective accountability to a range of stakeholders – water consumers in households and businesses, homes, streets and businesses relying on the disposal of wastewater, wild swimmers and river users, and a broad population which often derives unseen benefits from water management.”

Yes, indeed. So instead of the regulator trying to balance all these interest groups, or training and approving the senior water company staff, let the regulator instead invite the company and these interest groups to agree a business plan, and an associated set of prices. Then let the parties monitor the implementation of that plan, where appropriate modifying it over time.

Is that too fanciful? No, there is encouraging precedent in several countries.

A “negotiated settlement” approach is used in many US jurisdictions, and often involves many interested parties. The regulator says, in effect, “If you can agree a mutually acceptable way forward, we will facilitate this rather than stand in your way”.

For example, in 2023 Texas required electric utilities to submit System Resiliency Plans (SRPs) to improve grid reliability. In January 2025 CentrePoint filed an SRP costing \$5.75 billion. Interested parties negotiated with the company, which proved fruitful.

“On June 12, 2025, CenterPoint, Staff, the International Brotherhood of Electrical Workers Local 66, Gulf Coast Coalition of Cities, Houston Coalition of Cities, Texas Industrial Energy Consumers (TIEC), Texas Coast Utilities Coalition, the REP Coalition, Walmart, Inc., Enchanted Rock, LLC, and the Office of Public Utility Counsel (OPUC) entered into an agreement resolving the issues between themselves.”

This was not a unanimous agreement, but it was not opposed. “The remaining parties in this docket, Acclaim Energy, ERCOT, Hunt Energy Network LLC, PowerSecure, Inc., and Levit Green did not join, but do not oppose, the agreement. ... Under the agreement, the total cost of the SRP would be approximately \$3.2 billion.” The Commission accepted the revised and much cheaper plan, subject to a further \$365m reduction proposed by one commissioner, mainly relating to a detail of vegetation management.

The staff of the regulatory commission also signed the settlement. This is not required but not uncommon: staff cannot commit the commissioners but can help to facilitate discussion and agreement.

This approach could be the norm in the UK. The Water Industry Commission in Scotland (WICS) used it successfully in setting two main price controls on Scottish Water.

Water and energy regulators in England and Wales have successfully encouraged regulated companies to discuss and agree business plans with consumer and environmental parties. But these regulators have insisted on setting the actual price controls themselves. In some cases these have been bitterly contested or resented.

Why not let the various interested parties negotiate a business plan with each water and energy distribution company, plus an associated price control? Moreover, these parties would be interested to monitor the outcome. If the company is making excess profits, let the parties discuss this with the company and try to agree some sharing with customers. Or if the company finds that costs are higher than expected, let it try to negotiate some form of relief.

Concerns will thereby be addressed more quickly than by relying on a regulator. Quid Pro Quos will be offered and appreciated by both sides. This will build trust. It will encourage the kind of personality, competence and approach, on the part of utility directors and managers, that we would all like to see. And there will be greater variety of approach and more learning from experience. This seems a more pragmatic approach than expecting regulatory bodies to train utility managers to make the right decisions.

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