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Negotiated Settlements and Customer Engagement in UK Utility Regulation: Evidence from Airports, Water and Energy

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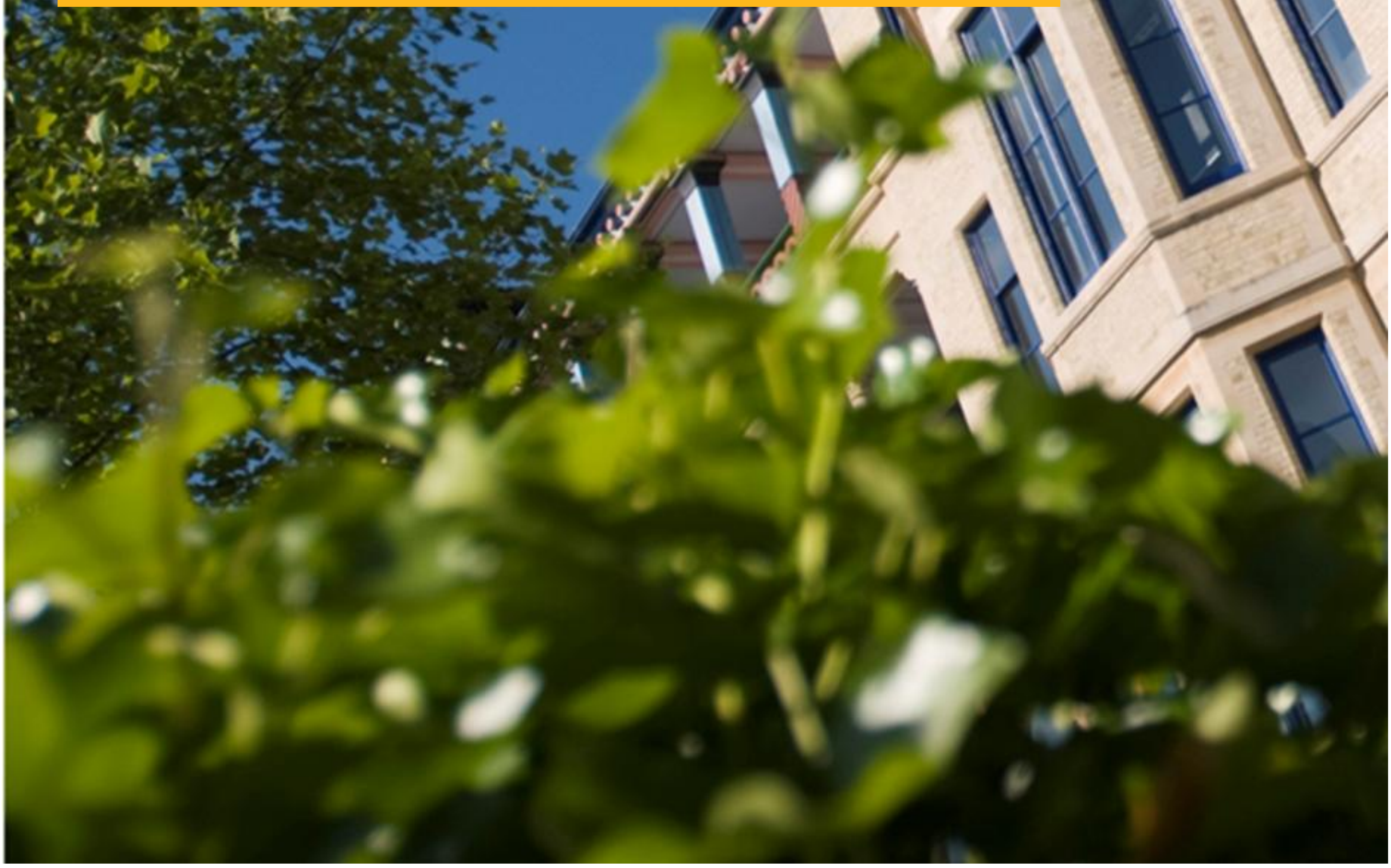

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Keywords : negotiated settlements; customer engagement; energy regulation; water regulation; airports.

JEL Classification : L51; L94; L95; L97

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Negotiated Settlements and Customer Engagement in UK Utility Regulation: Evidence from Airports, Water and Energy

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Abstract

Negotiated settlement has long been common in North American utility regulation but has played only a limited role in the United Kingdom. This paper looks at what can be learned from UK experience in airports, the Scottish water sector and energy networks, drawing in particular on presentations at a Cambridge seminar in March 2026. Airports show that direct bargaining can improve issue definition and customer focus even without full agreement. The Scottish water sector remains the clearest UK example of a near-negotiated settlement affecting the substance of the outcome. Energy networks have moved much further towards organised customer engagement than towards bargaining. The paper suggests that negotiated settlement deserves more serious attention in UK energy regulation where the issues are material, the parties are credible and the regulator can give the process real standing.

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1. Introduction

In a conventional UK price control review, the company puts forward a proposal, interested parties comment, and the regulator decides. That procedure is familiar, but it can also be slow, expensive and adversarial. It can treat closely related issues one by one rather than as part of a package. And it can leave both regulated companies and customers dissatisfied with an outcome they did not shape.

In North America, one response to that problem has been negotiated settlement: a process in which the company and various parties representing customers and other affected interests try to reach an agreement on some or all of the main issues, which is then put forward for regulatory approval.

The United Kingdom has not followed that route very far. That is not because the UK has ignored customer interests. On the contrary, regulators have increasingly relied on customer research, stakeholder groups, challenge panels and other forms of engagement. But they have usually stopped short of giving customers and other interested parties any real bargaining role.

This matters especially in energy. Price control is no longer mainly about squeezing inefficiency out of newly privatised monopolies. It is also about resilience, decarbonisation, network expansion, anticipatory investment, affordability and the treatment of future consumers. Similar pressures, though in different forms, can also be seen in airports and water. In those circumstances, the question arises whether some issues might be handled better through direct bargaining among the main parties than through regulator-led determination alone.

The immediate stimulus for this paper was a session on negotiated settlements in UK airports, water and energy at a seminar held in Cambridge in March 2026. The five presentations at that seminar, by the present authors, provide the main contemporary UK evidence considered here. Littlechild (2026) dealt with the broader historical and comparative background. Sutherland (2026) discussed the Scottish water sector. Knott (2026) discussed Ofgem's use of consumer representation. Bush (2026) and Walker (2026) dealt with airports, the first on the original constructive engagement exercises and the second on later practice.

Those seminar contributions do not simply express general views. They describe what particular regulators and regulated parties actually did. Littlechild placed the UK discussion against a longer history of RPI-X regulation and against more recent negotiated settlements abroad. Bush and Walker described what happened initially at Heathrow, Gatwick and Stansted airports, and later in Heathrow's next quinquennial price-control review. Sutherland described how the Scottish water regulator created the Customer Forum, what it asked the Forum to do, and why the later version of the model was weaker. Knott explained why the gas and electricity regulator Ofgem has preferred stronger customer representation and challenge to formal bargaining.

This paper does not argue that negotiated settlement is the answer to everything, or that the UK should simply copy North America. Instead, it asks what the UK experience in airports, water and energy actually shows; what the overseas experience helps to clarify; what advantages and difficulties have appeared in practice; and what that may suggest for future energy policy.

Section 2 reviews the relevant literature and gives a short account of what negotiated settlements look like overseas. Sections 3, 4 and 5 discuss airports, Scottish water and energy networks. Section 6 draws out the implications for the energy sector. Section 7 concludes.

2. Negotiated settlements overseas and in the literature

Doucet and Littlechild (2006) explain how negotiated settlement developed in legal and economic thinking in the United States. Settlement generally saves time and cost, but the point is not only speed. It also allows parties to trade across issues. Parties to a negotiation may be able to agree a preferred package: for example, stronger service standards in return for a higher revenue allowance, more information in return for less frequent review, or a different timing of expenditure in return for stronger delivery commitments. Doucet and Littlechild (2009) show how similar ideas developed in Canadian energy regulation, but in a setting where the regulator became more explicit about the treatment of settlements as packages reached by informed parties. Their Canadian examples show why this mattered: multi-year pipeline settlements could include toll levels, cost projections, incentive mechanisms and risk-sharing terms that would have been difficult to reproduce through a conventional hearing run issue by issue.

Littlechild (2012) makes a related point in relation to the Federal Energy Regulatory Commission (FERC): negotiated settlement can deal with a package of issues without removing the regulator from the centre of the process. The regulator remains central, but its role changes. It sets the framework, provides the backstop, may appoint settlement procedures or settlement judges, and decides whether the settlement can be accepted. It is not generally the sole architect of every term. FERC practice is important, but it is not the whole US story. At state level, negotiated settlements often arise because the parties themselves decide to bargain, not because the regulator actively organises the process. In that sense FERC is somewhat exceptional in the degree to which settlement procedure is formalised. At the same time, FERC is relevant because it shows how a regulator can actively try to bring about settlement, by encouraging early discussion, convening settlement procedures and working with the parties to narrow disagreement.

In the United States, settlements commonly involve more than one customer-side party. They may include consumer advocates, industrial users, shippers, distributors, producers, marketers, trade associations and environmental interests, alongside the regulated company and the regulator. The subject matter also varies. In electricity and gas it may include rates, cost recovery, capital expenditure, return on equity, service quality, depreciation, storm costs or resilience plans. In other words, negotiated settlement in the US is not usually a discussion between one company and one consumer body about one number. It is often a broader bargaining process involving several parties and a package of issues.

The recent examples cited by Littlechild (2026) illustrate the continuing practical use of settlement in the United States. In Texas, legislation in 2023 required electric utilities to file System Resiliency Plans. During 2024 and 2025 several of the large plans were revised through settlement discussions before approval by the Public Utility Commission of Texas. One example was CenterPoint's plan: several cities, industrial and retail customer interests, the Office of Public Utility Counsel and commission staff joined in a settlement that reduced the proposed expenditure substantially before the Commission approved it, with a further reduction proposed by one commissioner. In Florida, Florida Power and Light reached a four-year settlement in 2025 with several commercial customer groups, but the state consumer advocate opposed it and argued that residential customers were inadequately protected. The Florida commission nevertheless approved the agreement. That episode is instructive because it shows both that settlements need not command unanimous support and that a regulator may still judge that a contested settlement is preferable to starting again from scratch. Recent FERC staff practice is to propose settlement early and to facilitate it, and a high proportion of cases are now resolved that way. These examples do not show a single US model. They do show that settlement is a normal part of the regulatory repertoire and is still alive in major current cases.

Canada is similar in one sense and different in another. Negotiated settlements became important there too, particularly before the National Energy Board and now the Canada Energy Regulator, especially in oil and gas pipeline tolls and tariffs. But the Canadian discussion, as Doucet and Littlechild (2009) explain, has often placed more emphasis on the regulator's review of the process itself. The Canadian approach moved towards a position in which the regulator was less inclined to reopen every element of an agreement and more concerned with whether the process was informed and whether the resulting package was broadly in the public interest. That shift made settlements more workable. A recent example cited by Littlechild was the ten-year Alliance Pipeline agreement, approved in 2025, which reduced tolls, gave the shippers longer-term certainty and included a revenue-sharing provision. That kind of package helps to show why the Canadian regulator came to treat settlements as settlements, rather than as drafts for fresh line-by-line determination.

US and Canadian experiences are not identical. The US examples often show a wider range of customer and user parties and, other than at FERC, less involvement by the regulator to organise the process directly. The Canadian examples show more explicit movement by the regulator towards treating settlements as packages reached by informed parties rather than as drafts to be relitigated term by term. Both experiences are relevant to the UK. They show that negotiated settlement can take more than one form and does not depend on a single all-purpose customer body.

Mountain (2026) is mainly a proposal for adopting negotiated settlement more explicitly in Australia rather than evidence that such a practice is already standard there. Its value here lies in the way it frames the issue. It asks whether some parts of the regulatory bargain are better completed by adjudication alone or by bargaining under a public backstop. That is a proposal rather than a description of an established Australian energy-network settlement process, but it helps to clarify the economic logic by focusing attention on information, commitment and the possibility that informed parties may sometimes reach a more workable package than a regulator can readily construct on its own.

The literature on customer engagement is also relevant. Hahn, Metcalfe and Rundhammer (2020) note that regulators have increasingly sought to understand customer preferences more directly rather than relying solely on technical inference, that is, on economists' or engineers' estimates of what customers ought to value rather than evidence of what customers actually say they value. Heims and Lodge (2018), looking at UK water, treat customer engagement as part of a move towards a more collaborative style of regulation. Poulter and Bolton (2021), looking at Britain's energy networks, describe customer engagement as a substantial regulatory experiment rather than a settled solution. There is also a broader literature on changing regulatory context. Pollitt (2008) pointed out that a decarbonising energy system would strain inherited forms of electricity and gas regulation. Duma, Pollitt and Covatariu (2024) discuss the idea of the "learning regulator", meaning a regulator that has to adapt in conditions of uncertainty rather than simply apply a fixed model.

The present paper does not address the general theoretical debate. The more practical point is that both the literature and recent international examples show that negotiated settlement is a real institutional form; that it varies between jurisdictions; and that it normally depends on informed parties, a clear framework, and a regulator willing to give an agreement meaningful weight.

3. Airports: constructive engagement and its limits

The airport sector provides the clearest British case of direct customer-company interaction in a price-control setting.

The relevant experience began in the mid-2000s with the Civil Aviation Authority (CAA)'s use of constructive engagement for the BAA airports, especially Heathrow, Gatwick and Stansted, in the period leading to the price determinations for 2008–14. The background, as Bush (2026) explained, was dissatisfaction with a process in which too much of the discussion between airports and airlines had taken place through the regulator. The purpose of constructive engagement was to get the airport and the airlines talking with each other about the main building blocks of the next review before positions had completely hardened.

The process was not intended to transfer the whole price control from the CAA to the parties. The parties were expected to discuss such matters as quality-of-service standards, traffic forecasts and the investment programme, that is, questions on which airline views were directly relevant and on which the different elements could sensibly be discussed together. The CAA retained responsibility for matters such as operating expenditure, finance, cost of capital and the final control itself. In other words, the CAA was trying to improve the information and incentives around the review, not to abandon regulation.

Bush's account explains the gains and the difficulties. The gain was that airports and airlines were brought into more direct contact on the questions that mattered most to them. Even if agreement was not reached, the discussion could show whether the key disagreement was over traffic growth, service priorities, the scale of capital expenditure or the timing of delivery. That was useful to the regulator and also tended to make the airport more customer-facing.

The difficulties were also specific. There was a legacy of mistrust and, in some cases, combative personalities. Airline interests were not uniform. The CAA did not initially give enough attention to the practical rules of the game: timetables, records, and the general discipline needed if negotiation was to work. Most importantly, the CAA remained the fallback decision-maker. That feature is not unique to airports; it is inherent in most regulated sectors. But Bush's point was that, in airports, the parties knew they were discussing only part of the package and that the CAA would in any event determine the control. In those circumstances, if either side thought that holding out might produce a better outcome from the regulator, the incentive to compromise on intermediate questions was weakened.

The later airport material reinforces the same lesson. Walker (2026) described Heathrow's current quinquennial price-control review (H8), where constructive engagement remained central and was given a formal place in the review process by CAA guidance. Multiple rounds of airline-airport discussion took place on Heathrow Airport Limited's business plan and on the CAA's initial proposals. Yet agreement remained limited on the main contested issues, notably traffic, capital expenditure, service and finance. This was in contrast with Gatwick, where bilateral contracts between the airport and airlines and a lighter-touch regulatory regime reduced the weight placed on formal regulatory determination. Walker thus suggested not only continuity with the earlier airport experience but also a divergence between Heathrow and Gatwick in the amount of regulation still bearing on the bargaining process.

The airport evidence therefore does not show that the UK moved to a full negotiated-settlement model. It shows something more limited but still important. Direct interaction improved the process, improved issue definition, and in some settings contributed to a lighter-touch outcome.

4. Scottish water: the strongest UK case

The Scottish water sector is the clearest UK example of something close to negotiated settlement.

The institutional setting was distinctive. The company Scottish Water was publicly owned. Scottish Ministers set the objectives for the industry. The Water Industry Commission for Scotland (WICS) had a duty to promote the interests of customers, and to set charges at a level consistent with the lowest reasonable overall cost of delivering those objectives. Within that framework, WICS began to explore whether customers could have a more direct role in shaping the business plan and in discussing the trade-offs between expenditure, service and charges.

Sutherland (2026) explained that WICS itself initiated the process. In 2011 it established, through a memorandum of understanding with Consumer Focus Scotland and Scottish Water, what became the Customer Forum. This was not an informal discussion group. It had an independent chair, a defined remit, and a deliberate link to customer research. Its purpose at first was to work with Scottish Water on customer research and on understanding customer priorities. Then in October 2012 WICS asked the Forum to seek agreement with Scottish Water on the business plan for the 2015–21 Strategic Review of Charges. WICS also issued a substantial series of guidance papers and made clear that it would be minded to accept the result of any agreement.

WICS did not simply welcome an agreement if one emerged. It created the Forum, helped define its membership and role, set the framework, and then asked it to seek agreement with the company on the business plan for 2015–21.

Sutherland described the negotiation as dealing with the business plan as a whole: effectively the balance between expenditure, service commitments and charges. The Customer Forum drew on customer research commissioned to establish customer priorities and willingness to pay for improvements. Littlechild (2014) described the process as unusual in UK utility regulation because the company and the customer side were negotiating with each other, within a framework set by the regulator, rather than simply trying to persuade the regulator separately. The Customer Forum's later legacy report (Customer Forum, 2015) is also helpful here because it records, from the Forum's own perspective, how the process worked in practice: members met repeatedly with the company, used the research evidence to test proposals, and tried to arrive at a package they could defend as reflecting customer priorities rather than simply regulatory compromise.

According to Sutherland, the outcome was significant. Scottish Water accepted a tougher capital-efficiency target than the regulator itself could have justified through ordinary benchmarking, stronger service commitments, and an operating-cost target towards the upper end of the plausible range. The result was lower charges and higher service than would otherwise have emerged. The contemporaneous WICS paper on innovation and choice (WICS, 2013), the final determination (WICS, 2014), an observer's account (Littlechild, 2014), and the Forum's own retrospective report on the process (Customer Forum, 2015), all point in the same direction. That last report also stressed some practical ingredients of the process: continuity of membership, access to information, and the importance of WICS having said early on that an agreed outcome would carry weight.

For present purposes, this is the strongest UK evidence that a negotiated or near-negotiated process can affect not only the tone of regulation but its substance. It is also the clearest evidence that the process worked in part because WICS created the Forum, defined its role and signalled in advance that a negotiated outcome would carry weight.

However, the model was not sustained in the same form. A second Customer Forum was created for the next review, but by then the WICS Board was more concerned that too much influence was being exercised by a body that was not itself the statutory regulator. At the same time, the scale of future capital and asset-replacement needs had increased, so the trade-offs were more difficult and the sums at issue much larger. Sutherland's account was that WICS also moved away from the earlier style of guidance papers, which had left more room for negotiation, towards more directive decision papers that narrowed the scope for bargaining. The later process was therefore less open, less exploratory and the resulting agreement less specific. Sutherland suggested that the later model lacked some of the trust, flexibility and clarity of role that had mattered the first time round.

That does not wipe out the earlier success. But it does show that negotiated or near-negotiated processes are not necessarily self-sustaining. They depend on continued regulatory willingness to leave room for bargaining. For the energy sector, the Scottish water sector experience is especially relevant because it shows that customer representatives will commit time and serious effort when the process concerns the main package and when the regulator gives it real standing.

5. Energy networks: the regulator-led alternative

The energy case looks different. Ofgem has strengthened stakeholder and consumer involvement substantially, but not through negotiated settlement. Knott (2026) presented that as an institutional choice, not as a failure of reform.

Ofgem now uses independent stakeholder groups, consumer research, challenge processes and other forms of organised representation across price controls. But customers or their representatives do not bargain over an agreed package that is then presented for regulatory approval. The regulator still determines the price control. That was already clear in RIIO-2, and it remained so in the guidance on enhanced stakeholder engagement and in the subsequent RIIO-ED2 arrangements.

Knott explained the logic of this approach from inside the process. The move from RIIO-1 to RIIO-2 brought greater use of uncertainty mechanisms, stronger business-plan incentives and more ongoing monitoring. On this view, engagement is intended to inform the regulator's judgment throughout the control rather than to replace it with a bargain at the outset.

The regulator-led approach is more elaborate and more customer-facing than it once was. The question is not negotiated settlement versus a regulator that ignores customers. It is negotiated settlement versus a regulator that already has a developed system of engagement, challenge and ongoing monitoring.

That comparison is especially important in energy because the issues are unusually hard. Network price controls now involve resilience, anticipatory investment, decarbonisation, flexibility, affordability and future consumers. One can see why a regulator might prefer to keep tighter control over those trade-offs. Equally, one can also see why direct bargaining could improve acceptance and help reveal what customers are actually willing to support.

The energy case therefore presents the strongest reason for caution and the strongest reason for interest. It is cautious because the customer side is diffuse, the policy overlay is heavy, and the implications for future consumers are large. It is interesting because many of the difficult questions are about package trade-offs rather than isolated variables.

6. Implications for the energy sector

The airport and Scottish water sector experiences do not provide a model that can simply be transferred into energy. But they suggest some practical questions that seem worth asking.

The first is whether there are issues in energy regulation that are material enough, and packageable enough, to justify a more explicit bargaining process than current practice allows. The airport and Scottish water sector cases both suggest that parties are more likely to commit serious effort when the issues are central enough to matter.

The second question is whether customers and other interested parties are sufficiently informed and durable enough to participate credibly. The North American experience suggests that this need not mean a single all-purpose consumer body. It does mean, however, that the parties have to be able to negotiate in an informed and reasonably continuous way.

The third question is how far the regulator would be willing to give such a process real standing without giving up control of wider statutory and policy obligations. The airport case suggests that if the fallback is too dominant, bargaining may become half-hearted. The Scottish water sector case suggests that if the regulator makes clear that an agreement within the framework will carry weight, the parties will invest much more seriously in the process.

The fourth question is whether some of the present difficulties in energy regulation stem mainly from the detailed design of price controls or from wider government policies and intervention. If the more serious problem lies in the wider policy framework, negotiated settlement cannot solve the whole problem. It may still be useful, but it will be most useful where the wider framework is reasonably settled and the remaining question is how best to implement it.

7. Conclusion

The UK has not embraced negotiated settlement in the North American sense. But neither has settlement been wholly alien to British regulation.

Airports show that direct interaction between regulated firms and organised users can improve the process even without comprehensive agreement. The Scottish water sector shows that something close to negotiated settlement can work in the UK and can improve the outcome. Energy networks show that regulators have moved significantly towards stronger customer involvement, even while stopping short of explicit bargaining and negotiation.

For the energy sector in particular, the main lesson from the airport and water sectors is not that one sector can simply copy another sector. It is that bargaining becomes worth serious effort when the issues are material, the parties are identifiable, and the regulator gives the process enough standing to matter. While the evolving policy context of the energy sector means that these issues will probably be more complex in future, this also offers an opportunity to look again at the potential parties to a negotiation and to put more weight on finding an agreed way forward. New issues, new parties and a recognition of the value of consensus could in turn lead to new opportunities for negotiated settlement to form a more important part of future regulatory decisions.

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Cambridge Seminar Session

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Bush, H. (2026). Constructive engagement – the first attempt at UK airports.

Knott, G. (2026). Some observations on Ofgem's use of consumer representation in price control processes.

Littlechild, S. C. (2026). Negotiated settlements in UK airports, water and energy: past, present and future?

Sutherland, A. D. A. (2026). Negotiated settlements in the Scottish Water Industry: A brief summary.

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Bruce Mountain and Shruti Kant (2026), "AI as individualised persona: a useful addition to the economist's toolbox? The case of 'Stephen Littlechild AI Agent'".