

Minutes of the Joint Regulators' Group (JRG) meeting

25 June 2009

Present:

Peter Culham (JRG Chair/Ofcom)
Chris Bolt (PPP Arbiter)
Harry Bush (CAA)
Bill Emery (ORR)
Sarah Harrison (Ofgem)
James Le Couilliard (PPP Arbiter)
Richard Moriarty (TSA)
Ali Nikpay (OFT)
Iain Osborne (Niaur)
Anil Patel (Ofcom)
Paul Rogers (Ofcom/Secretariat)
Cathryn Ross (Ofwat)
Steve Smith (Ofgem)
Peter Swattridge (Postcom)
John Thomas (ORR)

Apologies

Nick Fincham (CAA)
Peter Marsh (TSA)
Alan Sutherland (Water Commission)

Welcome and introductions

1. Peter Culham welcomed all present. He explained that he had taken over the role of JRG Chair following Philip Rutnam's departure from Ofcom.

Role of JRG

2. It was agreed that JRG should not involve itself in technical level discussions but function as an informal high level forum for the exchange of views and to discuss matters of common interest. Members considered whether there was any advantage in JRG having a dedicated Secretariat; it was considered that this was not desirable as this might lead to the group becoming issue driven rather than being able to set its own agendas.

Duties of regulators

3. The Chairman raised the issue of 'duty creep' – the tendency with which recommendations of independent reviews lead to the imposition of new statutory duties on a regulator. JRG members thought:

- that, before new duties should be imposed on a regulator, consideration needed to be given on their impact on the work of the regulator
- that there could be conflict with the existing role of a regulator (eg a statutory duty to 'ensure' had a higher threshold than an existing statutory duty to 'have regard to')
- that the correct time to review the duties of a regulator would be at five to ten (or even twenty) year intervals rather than as a result of the latest crisis
- the independence of the regulator was in danger if the government was to continue to add to the range of their duties without considering whether it was an appropriate function for eg an economic regulator to carry out
- there was a danger that regulators could be accused of acting out of 'self interest' if they pushed back on the introduction of new roles. It was better to gain the support of the sponsoring department to make any necessary representations

4. The Chairman thanked the members for their views. It was agreed that this would be an issue to consider in more detail once an appropriate vehicle had been found to carry it forward.

Letter from the Pensions Regulator

5. The Chairman had received a letter from the Pensions Regulator (tPR) seeking a discussion with JRG members on the treatment of pensions deficits because:

- it believed that a common understanding of price regulation and of the prudential regulation of defined benefit schemes would be of benefit to it, the regulated industries and the economic regulators
- its expectation that strong employers (such as regulated firms) to repay deficits more quickly than weaker employers was often misunderstood by economic regulators
- there was a difference in approach amongst economic regulators as to how to treat regulated firms pensions costs

6. JRG members considered tPR's request. They agreed that an early meeting with tPR should be arranged.

Treatment of pension deficits and inflation in regulatory settlements

7. Ofcom was seeking views from JRG on whether it was desirable to adopt common approach to inflation indices and treatment of pension deficits when setting price controls. The background to the request was that Ofcom had been asked by BT Openreach to include pension top-up payments in their allowable cost base and had submitted a paper suggesting that other economic regulators allow some element of pension top-up payments to be included.

8. JRG members discussed their varying regulatory approaches and concluded that a Workshop should be convened attended by JRG members

and relevant experts to take the matter forward. The Chairman said that he would take the Workshop forward.

9. The JRG members discussed the merits of the various inflation indices and concluded that RPI, whilst not the most effective in coping with variances, had the advantage of being widely recognised.

Any other business

10. There was none.

11. The following actions were agreed:

- that a meeting should take place with the Pensions Regulator as soon as possible
- that Ofcom would arrange a Workshop to consider the issue of pension deficits and price controls