

Protecting vital public services: Why regulatory appeals should not be weakened

Executive Summary

The Prime Minister is right to say that:

“we’ve pushed power out to regulators and arm’s-length bodies that the vast majority of people haven’t even heard of, let alone voted for”¹

And, prior to becoming Prime Minister, that:

“one of the big problems now is the unaccountable state ... Everything through arm’s-length bodies. Everything pushed outside of democratic oversight ... There’s an unaccountable bureaucracy.”²

Yet the Business Department is proposing to make it harder to challenge unaccountable bureaucracies that wield enormous power over the most essential services in the country and over half a trillion pounds of investment – including by removing one of the very few mechanisms for testing whether they are delivering the strategic priorities set for them by Ministers.

Changes to regulatory appeals across aviation, energy, postal services and water would bring those sectors in line with pro-regulator reforms in telecommunications – reforms that came at Ofcom’s express request and led to a crash in the number of appeals. Mirroring that system would make other regulators less accountable and far more able to ignore government’s strategic priorities. **We therefore cannot see how the Business Department’s proposals are in line with the Prime Minister’s position.**

As well as reducing regulators’ focus on delivering government’s priorities, these proposals would also reduce the quality of decision making. Economic regulation exists because monopoly businesses lack the external pressures that would otherwise constrain their behaviour. But the same insight applies to the most important decisions taken by regulators themselves. If a regulator becomes (in effect) the sole judge of the price control it sets, without the realistic prospect of substantive independent challenge, the system replaces one source of incontestable economic power with another. A credible appeal mechanism makes regulatory judgment contestable. Its value is, therefore, not only that it corrects the occasional bad decision after the event: there is good evidence that the possibility of meaningful independent scrutiny changes the incentives of the regulator *before* the decision is made, encouraging stronger evidence, clearer reasoning and greater consistency.³ That is why there

¹‘Our state is both too strong and too weak’, Rt Hon Andy Burnham MP in *The Times*, (5th September 2026).

² ‘Andy Burnham wants to break ‘unaccountable state’, *The Times*, (9th July 2026).

³ For example, Lord Bellamy KC suggests that “scrutiny of the appeals system or perhaps even just the existence of an appeals system should improve the quality of decision making”, see: ‘[The Regulatory State: Ensuring its Accountability](#)’, pg.32, Vol I, *Select Committee on the Constitution*, (6th May 2004).

is a consistent body of academic and political evidence supporting the ability for regulated industries to access meaningful merits-based appeals.⁴

Effective appeals are, therefore, an important part of the UK's system of economic regulation. They provide an independent check on regulators and help to ensure that mistakes and poor judgments can be identified and overturned which strengthens investor confidence as well as the stability and predictability of the wider regulatory framework. Regulators determine whether a new power substation, reservoir or runway is built. They determine how much people pay for vital public services. They also often get it wrong. Being able to have mistakes overturned on appeal is essential for the proper running of our public services. Indeed, as a former Permanent Secretary of the Business Department said while running the Competitions and Markets Authority:

*"The regulatory appeals we have conducted in the electricity, water and telecoms sectors have been some of our most important work ... and thereby, of course, contributes to keeping the cost of capital low, which benefits us all from lower bills."*⁵

These safeguards are particularly important given the scale of investment required across regulated infrastructure. More than £550 billion of private capital is expected to be required across the water, energy and aviation sectors over the coming decade. The investment will fund infrastructure that is vital for securing our energy and water supplies, enabling new housing and boosting economic growth. Regulatory appeals are rarely used, but they have been needed from time to time. Since 2015, regulatory decisions worth approximately £1.6 billion have been overturned through appeals and redeterminations.⁶ The value of those corrected decisions is estimated to be as much as fifteen times greater than the total cost of appeals in the same period,⁷ and that is before considering the substantial wider benefit of providing investors with confidence to invest billions in UK infrastructure in the knowledge that major regulatory errors will be independently scrutinised and corrected.

Water UK supports the UK Government's objectives of making regulatory appeals more efficient and proportionate. We also recognise that greater consistency in decision making across sectors where common issues are being considered would help to improve efficiency for investors which would reduce unnecessary costs in utility and other consumer bills. Currently, time and resources are taken by investors and other stakeholders to understand unnecessarily different approaches across regulated sectors. However, it would be strongly counter-productive if the rules for appeals were consistently bad. In our view, the Business

⁴ For example, see: '[The Regulatory State: Ensuring its Accountability](#)', pg.71, Vol I, *Select Committee on the Constitution*, (6th May 2004).

⁵ '[Alex Chisholm on the CMA's achievements over the last 2 years](#)', *Competition and Markets Authority*, (May 2016).

⁶ See Annex 2 for a breakdown of regulatory decisions overturned by the Competition and Markets Authority. £1.6 billion understates the full impact as it only captures the direct quantified value of decisions that were amended or overturned. It does not include wider changes to regulatory methodologies, incentives or performance frameworks resulting from those decisions which set the precedent for future decisions.

⁷ See Annex 1.

Department's proposals will do this by bringing about consistency at the cost of making appeals unnecessarily difficult, time-consuming and uncertain.

The current framework benefits from having a proven track record, so any reforms need to have clear and substantial benefits. Any change will inevitably create some uncertainty for investors and credit rating agencies, which could contribute to a downgrading in the credit ratings of regulated sectors, and therefore increase household bills. Analysis undertaken by Oxera shows that even a modest deterioration in the credit quality of the water and energy sectors as assessed by credit rating agencies would add £50 a year to average household energy and water bills.⁸ Reforms should only be pursued where there is compelling evidence of substantial benefits. We are seriously concerned that the proposals would weaken important investor protections, undermine confidence in the regulatory framework and ultimately increase costs for households.

Regardless of what changes are made, it is essential that any reforms to the regulatory appeals framework should only be introduced after the 2029 price review (PR29) and regulatory reforms have concluded. Major price reviews require a stable appeals framework for challenge and accountability, particularly while regulated sectors are already delivering major investment programmes and adapting to once-in-a-generation regulatory change. For the water sector in England and Wales, that would mean retaining redeterminations for PR29.

Less accountability, higher consumer costs, slower process and weaker investor protections

The proposed reforms are likely to have the opposite effects to those intended. Moving to a narrower and more deferential "materially wrong" standard of review, under which appeal bodies would be less able to independently reassess regulatory judgments, requiring that successful appeals can only be remitted back to the regulator, and the transfer of appeals to the Competition Appeal Tribunal would have the following effects.

⁸ This analysis estimates the increase in financing costs associated with a one-notch downgrade in the credit rating of the regulatory environments for the water and energy sectors respectively. Because a downgrade would lead to a higher cost of capital, that would lead to higher household bills when prices are reset. Expressed in 2026 prices. See 'Analysis of the impact of credit rating downgrades on customer bills: Prepared for Centrica plc and Water UK', *Oxera*, (September 2026).

Figure 1: Estimated impacts of the proposed reforms⁹



£50

increase in annual household water and energy bills



£1.6 billion

value of corrected decisions that would not have been made over the last decade



£550 billion

critical UK infrastructure investment planned over the next decade being put at risk



463 days

extra days to correct regulatory decisions

- **Weaken regulatory accountability and independent scrutiny.** The combined effect of these reforms would be to make it significantly harder to identify, scrutinise and correct poor regulatory decisions. The appellate body would be less able to independently assess complex questions of fact, evidence and regulatory judgment and more likely to defer to regulators' original decisions. Many of the £1.6 billion of corrected regulatory decisions over the last decade would have been significantly harder, and in some cases seemingly impossible, to secure under the proposals.
- **Make regulatory appeals slower rather than faster.** The first word in the title of the UK Government's consultation is "swifter". Unfortunately, we believe that the proposals look to increase, rather than reduce, the time taken to resolve disputes. Unlike the Competition and Markets Authority, which is legislatively bound to conclude appeals according to strict time limits, the Competition Appeal Tribunal would not be subject to time limits. Appeals before the Competition Appeal Tribunal take longer to reach judgments on average than appeals to the Competition and Markets Authority – nearly two thirds longer or 138 more days.¹⁰ Furthermore, mandatory remittals, if adopted as proposed, would add around a

⁹ The additional days to correct regulatory decisions reflects the difference in the duration of the Competition Appeal Tribunal and the Competition and Markets Authority in reaching judgements which is 137 days on average, plus the average duration of remittals from the CAT being concluded, which is 325 days (based on analysis by Towerhouse LLP). We recognise that the CMA may in some cases also remit decisions, but in contrast to the proposals, this is not a requirement and in all but one case the Competition and Markets Authority has not done so.

¹⁰ Days from filing or reference until judgment - Towerhouse LLP analysis using data taken from a sample of 97 Competition Appeal Tribunal appeals and 30 Competition and Markets Authority appeals and 3 Competition and Markets Authority 'first instance' decisions (from prior to the current airports regime) (price control and non-price control issues). The Competition and Markets Authority takes on average 214 days while the Competition Appeal Tribunal takes on average 352 days.

further 315 days on average to resolve a dispute.¹¹ In many cases, the delay would be significantly longer. As an example, even after the 18 months it took for BT to successfully appeal Ofcom's 2016 Business Connectivity Market Review, Ofcom took a further 18 months to resolve the remitted issues.¹² Removing the statutory deadlines that currently apply to regulatory appeals would make things worse. Taken together, under the proposal appeals would be slower, less predictable and more prone to prolonged periods of uncertainty than the arrangements they would replace.

- **Increase rather than reduce costs.** The proposals are likely to encourage more formal lawyer-led proceedings, increase reliance on litigation and generate additional processes through remittals (which could themselves be disputed). Analysis undertaken by Towerhouse LLP suggests that a reasonably complex Competition Appeal Tribunal regulatory appeal could cost around £4.4 million for an appellant, compared with around £1 million under a Competition and Markets Authority appeal process.¹³ The proposals may also require regulated companies and regulators to devote greater resources to business plans, submissions and appeals in order to protect their positions under a more uncertain regime. These costs would either ultimately be borne by customers or divert resources away from investment and service improvements.
- **Reduce regulatory certainty at a critical point for infrastructure investment.** Investors and credit rating agencies place significant weight on the existence of credible, independent scrutiny of decisions made by regulators. Introducing a materially weaker and less predictable appeals framework while regulated sectors are seeking unprecedented levels of capital is likely to increase regulatory risk and could contribute to a downgrading in the credit ratings of regulated sectors, which would impact household bills. The Global Infrastructure Investor Association has said that “transferring appeals to the CAT and adopting a narrower standard of review would reduce regulatory accountability, increase perceptions of regulatory risk and weaken investor confidence”.¹⁴
- **Create inconsistency across the four nations of the United Kingdom.** The proposals would make water companies in England and Wales no longer able to seek a redetermination of a price control. Scottish Water and Northern Ireland Water would, however, retain such a right. Appeals in other sectors – such as payment systems, railways and highways – are also excluded from the consultation which would not deliver the cross-sector consistency the government seeks. It would seem odd to harmonise the rules for some companies across different sectors, and in so doing, create a lack of consistency within the same sector.

¹¹ Towerhouse LLP analysis, based on a representative sample of appeals that were remitted from the Competition Appeal Tribunal and the Competition and Markets Authority to the regulator to provide a new decision.

¹² Ofcom revoked the affected measures and imposed temporary conditions, then took 18 months to complete a new market review and reach a decision on the remitted issues. Ofcom, ‘Business Connectivity Market Review 2016: Revocation of certain measures imposed in the business connectivity markets’ (23 November 2017); Ofcom, ‘Statement: Promoting competition and investment in fibre networks – review of the physical infrastructure and business connectivity markets’ (28 June 2019).

¹³ ‘How to improve regulatory appeals: a report by Towerhouse LLP’, *Towerhouse LLP*, (September 2026).

¹⁴ ‘Swifter and simpler competition redress, regulatory appeals and competition enforcement: Global Infrastructure Investor Association response’, page 1, *Global Infrastructure Investor Association*, 25 September 2026.

Water UK considers these risks can be avoided while still delivering the UK Government's objectives.

Water UK's recommendations

Our preference is for redeterminations to be retained for price control decisions. Redeterminations provide the strongest independent scrutiny of a regulator's decisions, because the appellate body is responsible for reaching a fresh decision in line with the regulator's statutory duties and objectives. It also allows interactions between elements of a price control to be considered in the round. Redeterminations do not require every issue to be reopened: recent practice shows they are prioritised.¹⁵

If the UK Government remains committed to introducing a more focused appeals model for the water sector and other regulated sectors, we recommend that it considers alternatives to its proposed standard. In order of preference:

- We believe the government should consider adopting 'focused' redeterminations – which would retain the core principle of a redetermination but with a narrowing of the issues that are redetermined, helping to focus the process and reduce costs.
- Should the UK Government seek to move a standard based on proving 'wrongness' then it should not proceed with the 'judicial review plus' standard that it proposes to apply. The UK Government should take the opportunity presented by the reforms to develop a bespoke standard for regulatory appeals that takes from the best features of existing standards, incorporates recent case law and overcomes the weaknesses of other proposals. We suggest a potential formulation in Section 3.5.
- A less desirable alternative would be to apply a modified version of the standard of appeal that already exists in some form in the energy and aviation sectors.

Whichever appeal standard is adopted, the appellate body needs to be able to substitute its own decisions whenever it decides to quash a regulator's decision. Remittal could still be available where further regulatory judgment or consultation is genuinely required, but should not be mandatory. Where an issue is remitted, the regulator should be subject to clear directions and time limits.

The appellate body needs to have the independence, expertise, analytical capability, procedures and powers to effectively scrutinise regulatory decisions. The current model has specialist panels supported by substantial economic, financial, regulatory and technical capability. Whichever organisation is made responsible for regulatory appeals, we strongly recommend that the UK Government ensures that the existing specialist regulatory appeals capability is preserved in substance. We identify three institutional options: retaining the regulatory appeals function within the Competition and Markets Authority; establishing a new Office for Regulatory Appeals; or enhancing the Competition Appeal Tribunal. The simplest,

¹⁵ ['Water PR24 Redetermination References - Approach and prioritisation'](#), pg.11, *Competition and Markets Authority*, (May 2025).

and least costly, approach would be to retain the regulatory appeals function for the sectors in scope of this consultation within the Competition and Markets Authority.

The new regime needs to include statutory time limits. Without them, the UK Government's objective of faster appeals will not be met. We recommend that legislation should specify a time period within which an appeal must normally be determined. Separate deadlines where matters are remitted to the regulator are also required.

All relevant decisions taken by regulators should be within scope of the regulatory appeals regime. Should the UK Government wish to proceed with applying a more consistent approach to regulatory appeals, we recommend that it ensures that the scope of appeals under a consistent approach includes all relevant decisions made by a regulator, consistent with the approach taken for regulatory appeals against Ofcom.

Eligibility to appeal should remain focused on those directly affected by a regulatory decision. Third party interests are already well-represented within existing processes, and extending the right would risk enabling speculative or vexatious appeals that would work against the objective of a quicker, simpler and more proportionate framework. We note that for some sectors, third parties may be justified to have rights to initiate an appeal based on the market structure, such as the existence of upstream or downstream markets.

Taken together, we believe our recommendations should allow the UK Government to pursue its goals of greater consistency, proportionality and speed without weakening the independent scrutiny and accountability that are central to effective regulation.

Next steps

Should the UK Government seek to proceed, we urge it to engage with industry, investors and other stakeholders on its emerging thinking ahead of sector-specific consultations. Given that the UK Government's final policy will have affect across sectors, should the UK Government revise its proposals we strongly recommend that it conducts a further consultation prior to sector-specific implementation.

Contents

Executive Summary.....	1
1. Why regulatory appeals matter.....	9
2. Principles for reforming regulatory appeals.....	11
2.1 Ensuring effective scrutiny of regulators is the primary goal of reform	11
2.2 Establishing the right type of consistency across sectors	11
2.3 Enabling efficient, speedy and final resolutions	13
3. Appeal standard and remedies.....	15
3.1 The proposed standard would fundamentally weaken appeal rights	15
3.2 Telecommunications has fared poorly under its weaker appeal standard	15
3.3 Making appeals harder will damage the economy	18
3.4 Why redeterminations are our preferred model	22
3.5 Alternative ‘focused’ reforms	22
3.6 Effective remedies.....	27
4. Appellate body and procedures.....	30
4.1 Features of an effective appellate body.....	30
4.2 Institutional options.....	30
5. Expert evidence and hearing procedures.....	35
5.1 Expert evidence.....	35
5.2 Statutory time limits	35
5.3 Publication of decisions and reasoning	36
6. Scope, eligibility and participation	38
6.1 Decisions within scope of appeals	38
6.2 Eligibility to bring an appeal.....	38
6.3 Cost recovery	39
7. Transition and timelines.....	42
Annex 1: Costs of regulatory appeals	45
Annex 2: Financial impact of regulatory appeals	46
Annex 3: Consultation questions	49

1. Why regulatory appeals matter

Regulated sectors are critical to both the UK economy and household finances. Together, the water, energy, aviation, telecommunications and postal sectors generate annual turnover of around £302bn, equivalent to around 10% of UK gross domestic product (GDP), support nationally important infrastructure and provide services relied upon by households and businesses every day. Average households spend more than £3,500 a year on these services. They also account for a significant share of household expenditure. Decisions taken by regulators therefore have direct implications for customer bills, economic growth, infrastructure delivery and long-term investment.

Figure 2: Annual turnover and average household expenditure across regulated sectors¹⁶

	 Energy	 Water	 Aviation	 Post	 Telecoms	Total
Annual turnover	£138bn	£19bn	£62bn	£26bn	£57bn	£302bn
Average annual household spend	£1,723	£639	£21	£31	£1,134	£3,548

Source: ONS, Ofgem and Water UK.¹⁷

Regulators necessarily exercise substantial discretion independently of both government and industry, in line with their statutory duties and objectives set by Parliament. Regulatory appeals, overseen by an independent expert body, have been a critical part of the UK's regulatory architecture since the 1980s. They help to ensure that the decisions taken by regulators are robust and have helped to give investors the confidence they need to provide substantial levels of investment in regulated infrastructure to improve outcomes for customers, the environment and the economy.

Regulatory appeals are always a last resort. But they can be a necessary safeguard when regulators make mistakes or poor judgments that need to be overturned. Effective scrutiny is not about protecting regulated companies or their investors – it aims to make regulators ensure that the decisions that they make are well-reasoned and able to be justified. They also ensure that regulators can be effectively held to account for decisions that they make.

¹⁶ Annual turnover figures are for 2024. Average household expenditure is based on 2024-25 data for aviation, post and telecoms; 2026 bill data for water; and October to December 2026 rates for energy bills.

¹⁷ [‘Annual Survey of Goods and Services: 2024’](#), Table 6, *Office for National Statistics*, (March 2026); [‘Family spending in the UK: April 2024 to March 2025’](#), *Office for National Statistics*, (June 2026); [‘Energy price cap unit rates and standing charges’](#), Ofgem, (August 2026); [‘Annual average bill changes 2026-2027’](#), *Water UK*, (2026).

These concerns are not theoretical. Decisions worth around £1.6 billion have been overturned through regulatory appeals and redeterminations since 2015.¹⁸ Ensuring an effective system of regulatory appeals matters now more than ever, as the level of investment that needs to be raised in the economy continues to rise. In the water, energy and aviation sectors alone, more than £550 billion of private capital needs to be raised over the next decade to upgrade infrastructure across the country and to support economic growth, based on HM Treasury estimates.¹⁹

This importance of effective appeals is also recognised by investors and credit rating agencies. S&P has highlighted the role of an *“impartial and credible third party with a proven track record”* in regulatory appeals as a strength of the UK regulatory framework.²⁰ Moody’s has similarly described the Competition and Markets Authority’s process as *“an integral part of the UK regulatory framework”*, noting that *“the existence and judicious use of an appeals mechanism contributes to the stability and predictability of the regulatory regime”*.²¹ Infrastructure investors have made similar points, with organisations including the Global Infrastructure Investor Association and CPP Investments highlighting effective independent appeals as an important safeguard for long-term investment.²²

The current framework benefits from having a proven track record, so any reforms need to have clear and substantial benefits. Any change will inevitably create some uncertainty for investors and credit rating agencies, which could contribute to a downgrading in the credit ratings of regulated sectors, and therefore increase household bills. Analysis undertaken by Oxera shows that even a modest deterioration in the credit quality of the water and energy sectors as assessed by credit rating agencies would add £50 a year to average household energy and water bills.²³ Reforms should only be pursued where there is compelling evidence of substantial benefits. We are seriously concerned that the proposals would weaken important investor protections, undermine confidence in the regulatory framework and ultimately increase costs for households.

¹⁸ This is the total change in revenue (in nominal terms) of regulatory price control appeal decisions and redeterminations made by the Competition and Markets Authority since 2015. See Annex 2.

¹⁹ Based on analysis of [‘UK Infrastructure: A 10 Year Strategy’](#), HM Treasury, (June 2025); plus estimates of upcoming determinations for Heathrow, NATS and Northern Ireland Energy Networks.

²⁰ ‘Preliminary Regulatory Assessment for Water Utilities in England and Wales: Strong/Adequate’, pg. 4, *S&P Global Ratings*, (March 2026).

²¹ Mentioned in [‘Andrea Coscelli: our work in the regulated sectors’](#), Competition and Markets Authority, (October 2016).

²² [‘Water sector redeterminations - CPP Investments’ response to the CMA’s WACC Consultation process](#), pg. 3, *CPP Investments*, (January 2021).

²³ ‘Analysis of the impact of credit rating downgrades on customer bills: Prepared for Centrica plc and Water UK’, *Oxera*, (September 2026).

2. Principles for reforming regulatory appeals

The UK Government proposes to reform the system of regulatory appeals for the water sector in England and Wales, the energy sector in Great Britain and Northern Ireland, as well as the aviation, postal services and telecoms sectors across the United Kingdom.²⁴

In its consultation, the UK Government says that *“there is an opportunity to refine the current framework, with the aim of developing a regulatory appeals system that is more consistent, efficient and proportionate, promotes stakeholder confidence and better supports an effective use of resources.”*²⁵

2.1 Ensuring effective scrutiny of regulators is the primary goal of reform

We support making regulatory appeals systems more efficient and proportionate. However, most importantly, the system should provide an effective ‘check and balance’ on regulators to ensure that their decisions are robust, in line with the duties and objectives set by Parliament, and able to be overturned and corrected, with minimal disruption to essential services and investment programmes.

This objective is especially important given concerns about the performance, capability and effectiveness of regulators. Recent reviews have recommended significant changes – most notably the Independent Water Commission in England and Wales, but also the review of Ofgem, and a review into the accountability of UK regulators by the House of Lords’ Industry and Regulators Committee.²⁶

Since the consultation on regulatory appeals was published, the new Prime Minister and his Cabinet have identified the need for “stronger public control” of essential services, committing to produce a plan to make them “affordable and accountable”.²⁷ In our view, it reinforces the importance of ensuring that the proposed reforms do not inadvertently weaken the ability to hold regulators accountable.

2.2 Establishing the right type of consistency across sectors

Removing unnecessary differences and costs

We recognise that greater consistency in decision making across sectors where common issues are being considered can help to improve certainty for investors and take out unnecessary costs from utility and other consumer bills. Currently, time and resources are taken by investors and other stakeholders to understand different approaches and legal

²⁴ [‘Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement’](#), pg.57, *Department for Business and Trade*, (July 2026). The consultation explains in paragraph 161 that “The government is engaging with the Devolved Governments in relation to the Devolved Sectors Regulatory Appeals”.

²⁵ [‘Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement’](#), pg. 57, *Department for Business and Trade*, (July 2026).

²⁶ [‘Who watches the watchdogs? Improving the performance, independence and accountability of UK regulators’](#), *House of Lords Industry and Regulators Committee*, (February 2024).

²⁷ [‘PM statement to the House of Commons’](#), *Prime Minister’s Office, 10 Downing Street and The Rt Hon Andy Burnham MP*, (1st September 2026); [‘Prime Minister puts public control, community regeneration and cost-of-living at the heart of plans to ‘rewire Britain’](#), *Cabinet Office and The Rt Hon Louise Haigh MP*, (2nd September 2026).

standards across regulated sectors which could otherwise be focused on investment and delivery.

Consistency should be pursued to remove unnecessary differences – particularly where the same or similar issues are considered. The existence of different legal standards between energy and water appeals appears to have caused seemingly inexplicable differences in interpreting standard economic facts. For example, in its March 2026 redeterminations for five water companies in England, the Competition and Markets Authority overturned Ofwat’s decision to apply an annual efficiency challenge of 1% a year based on its observation of declining productivity levels in utility sectors and the wider economy. Instead, the Competition and Markets Authority set an annual efficiency challenge of 0.7% a year.²⁸ Just five months later, the same appellate body proposed to reject an appeal by gas networks on the same issue in its provisional decision in the RIIO-3 price control, seemingly due to the different legal standard between the two appeals regimes.²⁹

These recent decisions undermine predictability for investors. It also demonstrates that any movement to a consistent standard should be combined with effective scrutiny of a regulator’s decision to ensure that an appeal leads to a better outcome that supports the government’s objectives for the sector, such as investment – we set out what such a standard could be in Section 3.

Failing to achieve consistency *across* sectors – and creating inconsistency *within* sectors

We note that the consultation aims to establish a consistent approach across regulated sectors. However, it only relates to a subset of regulated sectors across the United Kingdom. If enacted, new inconsistency will be created.

Most notably, the consultation would appear to create inconsistency within and across the following sectors:

- **The water sectors in Scotland and Northern Ireland.** Unlike the changes proposed for water in England and Wales, both jurisdictions would retain the ability to refer price control decisions to the Competition and Markets Authority through a redetermination process.
- **Payment systems across the United Kingdom.** Currently, some decisions taken by the Payment Systems Regulator can be appealed to the Competition and Markets Authority or the Competition Appeal Tribunal; others are heard by the courts. For regulatory decisions that can be appealed to the Competition and Markets Authority, appellants must demonstrate that the decision was wrong under specified grounds of appeal.³⁰ The Competition and Markets Authority is able to remit or substitute decisions. Regulatory

²⁸ ‘[Water PR24 references: Final Determinations - Summary](#)’, pg. 17, *Competition and Markets Authority*, (March 2026).

²⁹ ‘[Energy License Modification Appeals 2026: Summary of provisional determinations](#)’, *Competition and Markets Authority*, (August 2026).

³⁰ Under [Section 79](#) of the Financial Services (Banking Reform) Act 2013, those grounds are: failure to have regard to or give appropriate weight to statutory duties and objectives; errors of fact; or wrong in law.

decisions that can be appealed to the Competition Appeal Tribunal are considered under judicial review principles, and remittals are not allowed.³¹ The Financial Services and Markets Bill, which was introduced on 15th September 2026, and will abolish the Payment Systems Regulator by transferring its functions to the Financial Conduct Authority, appears to retain the existing regime for appeals to the Competition and Markets Authority and remove the regime for appeals to the Competition Appeal Tribunal (transferring the latter to the courts).³²

- **Railways across the United Kingdom.** The Railways Bill proposes to either remove appeal rights altogether (such as for licence changes for Great British Railways and other licences holders) or to give responsibility for considering appeals of decisions made by Great British Railways affecting others to the Office of Rail and Road under judicial review principles. Substitutions would be possible under specific circumstances.³³
- **Highways across the United Kingdom.** The Highways (Financing) Bill, which was introduced to Parliament on 10th September 2026, establishes a Regulated Asset Base model for the Lower Thames Crossing. The Bill proposes that the Competition Appeal Tribunal be the appellate body for appeals relating to licence changes and disputes over penalties, with specified grounds of appeal. Remittals would not be allowed.³⁴

We note that as a result of the consultation's proposals, unless they change, the consequence would be to *reduce* consistency between the four nations of the United Kingdom within the water sector, as well as between those regulated sectors that are in scope of this consultation and those that are not.

Should the UK Government seek to comprehensively apply a consistent approach across regulated sectors, it may want to ensure alignment of both the appeals standard, bodies and procedures currently being considered by Parliament through the railways, highways and payment systems bills.

2.3 Enabling efficient, speedy and final resolutions

We strongly support the UK Government's objective of making regulatory appeals less costly and capable of being resolved more quickly.

The first step to removing unnecessary costs is to improve the system of regulation, so that regulators are more likely to make effective decisions in the first place. We, therefore, welcome the UK Government's programme of regulatory reform, including its commitment to establish new water regulators in England and Wales and to reduce the administrative burden of regulation by 25% by the end of the parliament, a commitment that was recently reaffirmed

³¹ See [section 77](#) of the Financial Services (Banking Reform) Act 2013.

³² See [section 131Z16](#) of the Financial Services and Markets Bill and [paragraph 122](#) of the Financial Services and Markets Bill: Explanatory Notes.

³³ For the abolition of existing appeal rights, see [schedule 4, paragraphs 6 and 30](#) of the Railways Bill. For the new appeals procedure to be overseen by the Office of Rail and Road, see [clauses 67 and 68](#) of the Railways Bill.

³⁴ The proposed grounds for appeal are: decisions based on errors of fact; decisions wrong in law; decisions unreasonable or wrong for any other reason. See [section 82](#) of the Highways (Financing) Bill.

by the Chancellor of the Exchequer.³⁵ Simpler regulation should make regulatory mistakes less likely and, therefore, appeals less necessary. With simpler regulation, any appeals would be easier, cheaper and faster to conduct.

Appeals should provide final resolution, with the poor decisions able to be substituted by the appeal body, not remitted to the original regulator.

³⁵ [‘Chancellor John Healey’s Growth Speech 2026’](#), *HM Treasury and The Rt Hon John Healey MP*, (September 2026).

3. Appeal standard and remedies

3.1 The proposed standard would fundamentally weaken appeal rights

The consultation proposes a consistent standard of review for the decisions taken by the regulators for the sectors in scope of the consultation, including for price control and non-price control matters.

The consultation proposes for those sectors in scope of the consultation:³⁶

- For the **standard of review**, to take the approach that currently is used in telecoms for non-price control decisions to *all* regulatory decisions, where a case would be decided “on judicial review principles, while ensuring that the merits of the case are duly taken into account.” The consultation goes on to say that “in practice, this means that, in addition to scrutinising the decision for procedural unfairness, illegality and unreasonableness [the appellate body would] also [assess] whether the decision was ‘wrong’ after considering the merits of the case.”
- For the **grounds of review**, “parties would be required to set out the grounds of appeal in the notice of appeal and specify whether they consider that the regulator’s decision was based on an error of fact, was wrong in law, or whether there was an error in the exercise of the regulator’s discretion.”
- For the **remedies available**, the appellant body “would have the power to dismiss the appeal or quash the whole or part of the regulator’s decision. Where it quashes the decision, the [appellate body] would have to remit the matter back to the regulator with a direction to reconsider and make a new decision in accordance with the [appellate body’s] ruling.”

Although it is recognised as a change from the current system of appeals in water, the consultation does not make any reference to the scale of the change. If it goes ahead, it will be the largest change to the appeals used in water for more than thirty years. From being able to have Ofwat’s decisions on price control matters be fully redetermined, water companies would have far fewer rights of appeal.

3.2 Telecommunications has fared poorly under its weaker appeal standard

We are seriously concerned that the proposed standard would make it much harder to have poor decisions overturned because:

The standard used in telecommunications is designed to frustrate appeals

In 2016, the then UK Government removed the requirement for appeals from Ofcom to the Competition Appeal Tribunal to be decided “on the merits”. It followed comments by the then-CEO of Ofcom that “the ability and the freedom with which you can appeal Ofcom’s decisions

³⁶ ‘[Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement](#)’, pg.69, paragraph 204, Department for Business and Trade, paragraph 204, (July 2026).

is too easy and the threshold for it and the nature of the appeal are too wide.”³⁷ The Secretary of State who had overseen the Bill’s drafting later admitted to Parliament that it was changed at Ofcom’s request.³⁸ He argued that, “One reason why it is necessary is that it has become apparent in recent years that almost every single decision taken by Ofcom is promptly challenged in the courts.” That may have been true in telecommunications. It is certainly not the case in the aviation, postal services, energy or water sectors.

Ahead of altering the law to require that the Competition Appeal Tribunal decide appeals by applying the principles of judicial review, the government published an impact assessment. In setting out that the change would ensure that the “the merits of the case are duly taken into account,”³⁹ it also rightly described the change as introducing “a limitation in the scope of the standard of review for appeals.”⁴⁰ In fact, it made no secret that, “One of the aims is to reduce the amount of time and resource spent during the appeals process. There will be an immediate benefit to Ofcom through the reduced resource spent on defending appeals.” Regardless of how much resource it spent, Ofcom lost appeals that the UK Government itself recognised it may not have done under the judicial review standard.⁴¹ Ofcom wanted fewer appeals and succeeded.

The then government’s explicit objective was to, “...reduce the *volume* and length, and thus cost, of appeals litigation.”⁴² On that yardstick, it worked. Between 2003 and 2016, there were more than forty appeals of Ofcom’s decisions. Since 2017, there have been only five substantive appeals and Ofcom prevailed in all of them.⁴³ The consequence, however, of fewer appeals is that decisions that might have been overturned under the old system have been allowed to stand. As outlined in the next section, it was a consequence the then government foresaw and thought a price worth paying.

The then-UK Government openly admitted that past price control decisions would not have been overturned under the new standard

By the UK Government’s own admission, the successful overturning by appeal of Ofcom’s decisions in two price controls in the five years prior to the standard changing in 2017, “...may not have been made under the proposed judicial review standard of appeal.”⁴⁴ It openly admitted that, “It is therefore reasonable to assume that there could in the future be cases

³⁷ [‘Briefing Paper 7699: Digital Economy Bill’](#), pg.18, *House of Commons Library*, (September 2016).

³⁸ [‘Digital Economy Bill, Volume 614’](#), column 784, Rt Hon John Whittingdale MP, (13th September 2016).

³⁹ [‘Ofcom Appeals, Impact Assessment’](#), pg.10, *Department for Digital, Culture, Media and Sport*, (May 2016).

⁴⁰ [‘Ofcom Appeals, Impact Assessment’](#), pg.14, *Department for Digital, Culture, Media and Sport*, (May 2016).

⁴¹ [‘Ofcom Appeals, Impact Assessment’](#), pg.9, *Department for Digital, Culture, Media and Sport*, (May 2016).

⁴² [‘Ofcom Appeals, Impact Assessment’](#), pg.11, *Department for Digital, Culture, Media and Sport*, (May 2016). Italics added.

⁴³ [‘Viasat UK Ltd and Viasat, Inc. v Office of Communications’](#), *Competition Appeal Tribunal*, [2018] CAT 18; [‘Virgin Media Limited v Office of Communications’](#), *Competition Appeal Tribunal*, [2020] CAT 5; [‘TalkTalk Telecom Group plc and Vodafone Limited v Office of Communications’](#), *Competition Appeal Tribunal*, [2020] CAT 8; [‘CityFibre Limited v Office of Communications’](#), *Competition Appeal Tribunal*, [2022] CAT 33; [‘Sky UK Limited v Office of Communications, Competition Appeal Tribunal’](#) [2023] CAT 70, [‘Sky UK Limited v Office of Communications, Competition Appeal Tribunal’](#), [2024] CAT 54.

⁴⁴ [‘Ofcom Appeals, Impact Assessment’](#), pg.10, *Department for Digital, Culture, Media and Sport*, (May 2016).

that would have been successfully appealed under the old system, but which are not successfully appealed under the proposed new system.”⁴⁵

At the time, the UK Government was unbothered by such an impact on business because it believed that, “Given that price control matters will always have a net direct impact on business of zero, we conclude that the preferred option will have zero net cost to business.” Even if that were true, there is an injustice if one party has less ability to seek redress from a poor regulatory decision. It is particularly unjust given that such parties used to have the ability to appeal more easily but had their appeal rights expressly limited. These impacts are not trivial. As the Impact Assessment made clear, the overturning of Ofcom’s decisions in the price controls before 2016 saw the transfer of more than £50 million in income between BT Openreach and other firms.

The standard used in telecommunications makes poor regulatory decisions too difficult to overturn

Since the appeal rights in telecommunication was deliberately weakened, not a single attempt to have a decision by Ofcom overturned on appeal has succeeded.⁴⁶ In water, either in whole or in part, every single company which has had a price control redetermined since 2014 have significantly overturned Ofwat’s decisions. All of the energy appeals of price controls since 2015 (that have been finalised to date) have led to changes, some very material. Such legal interventions, and the consequential improvements to infrastructure, the economy and the environment, are now being put at risk.

It is not difficult to see why the post-2017, weaker standard used in telecoms appeals makes poor regulatory decisions too difficult to correct. As has been repeatedly held by the country’s most senior judges, a high bar is created if an appeal body is only able to look at whether a decision is “materially wrong”. For example:

- In the specific matter of T-Mobile and O2’s appeal of a decision by Ofcom, the Court of Appeal held that, if “materially wrong” is the standard, then, “That may be very difficult if all that is impugned is an overall value judgment based upon competing commercial considerations in the context of a public policy decision.”⁴⁷
- the Court of Appeal has held that, “...on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the

⁴⁵ ‘Ofcom Appeals, Impact Assessment’, pg.10, *Department for Digital, Culture, Media and Sport*, (May 2016).

⁴⁶ ‘*Viasat UK Ltd and Viasat, Inc. v Office of Communications*’, *Competition Appeal Tribunal*, [2018] CAT 18; ‘*Virgin Media Limited v Office of Communications*’, *Competition Appeal Tribunal*, [2020] CAT 5; ‘*TalkTalk Telecom Group plc and Vodafone Limited v Office of Communications*’, *Competition Appeal Tribunal*, [2020] CAT 8; ‘*CityFibre Limited v Office of Communications*’, *Competition Appeal Tribunal*, [2022] CAT 33; ‘*Sky UK Limited v Office of Communications, Competition Appeal Tribunal*’ [2023] CAT 70, ‘*Sky UK Limited v Office of Communications, Competition Appeal Tribunal*’, [2024] CAT 54. (all effectively dismissed on all grounds).

⁴⁷ ‘*T-Mobile (UK) Limited v Office of Communications (Sequencing Decision)* [2008] EWCA Civ 1373 [31]’, pg.7, *Competition Appeal Tribunal*, (December 2008).

decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere.”⁴⁸

- The House of Lords earlier set out the principle of restraint by courts considering appeals, “...the appellate court should only interfere when they consider that the judge of the first instance has not merely preferred an imperfect solution which is different from an alternative imperfect solution which the Court of Appeal might or would have adopted, but has exceeded the generous ambit within which a reasonable disagreement is possible.”⁴⁹
- The high threshold for intervention to overturn a regulator’s decision under the current telecoms appeal standard was acknowledged by the Competition Appeal Tribunal: “... *in principle, it is possible for different conclusions to be reached when applying the law to the facts. In so far as it is an evaluative judgment, then, in principle, it is a matter for the decision-maker, Ofcom. It is not for the Tribunal to substitute its own view*”.⁵⁰ In a separate case it said that the statutory language regarding telecoms appeals had changed, effect from 31 July 2017 sufficient to have a bearing on the interpretation of earlier case law - “*the previous wording in s.195 [of the Communications Act 2003] ... provided for an appeal to be decided “on the merits”, so some care is needed in considering earlier case law*”.⁵¹

The proposed standard accords too much deference to Ofcom

To avoid any doubt over how hard it is to appeal a decision by Ofcom under the standard that is proposed be applied to the other sectors, the Competition Appeal Tribunal made it clear in its decision against Virgin Media’s appeal in 2020. In that case, the Competition Appeal Tribunal ruled that, “The role of the Tribunal is not one of rehearing the case on its merits. Proper respect must be accorded to Ofcom’s role as a specialist regulator, and the expertise of Ofcom’s staff.”⁵² Furthermore, “Ofcom’s judgment... must be accorded respect.”⁵³

3.3 Making appeals harder will damage the economy

There should be no doubt that such a set of rules, if extended to water, would represent a fundamental reduction in the ability of regulated firms to have poor regulatory decisions overturned. Even if not as fundamental, the changes for the energy, postal services and aviation sectors are significant.

⁴⁸ *Asquith LJ Bellenden (formerly Satterthwaite) v Satterthwaite* [1948] 1 All E.R. [345], pg.22, *Courts and Tribunals Judiciary*, (March 2021).

⁴⁹ Lord Fraser of Tullybeton G v G [1985] 1 WLR 647 [652E], *The Weekly Law Reports*, May 1985.

⁵⁰ *Sky UK Limited v Office of Communications – Judgment (remedy)*, paragraph 25, *Competition Appeal Tribunal*, [2024] CAT 54 [25].

⁵¹ ‘*Communications Act 2003*’, s.195, (July 2003); ‘*Virgin Media Limited v Office of Communications*’, *Competition Appeal Tribunal*, [2020] CAT 5 [53].

⁵² ‘*Virgin Media Limited v Office of Communications*’, *Competition Appeal Tribunal*, [2020] CAT 5 [57].

⁵³ ‘*Virgin Media Limited v Office of Communications*’, *Competition Appeal Tribunal*, [2020] CAT 5 [59].

There is already huge uncertainty concerning the regulatory landscape in water. Other sectors are also subject to reform. Indeed, it is notable that the Competition Appeal Tribunal itself cautioned against changing the standard of review during another period of “considerable legislative and institutional change.” Namely, the abolition of the Competition Commission and Office for Fair Trading in order to create the Competition and Markets Authority. Given the uncertainty that created, the Competition Appeal Tribunal was right to warn that, “...it may be premature to consider further changes to the standard of review, particularly in an area of profound economic significance to regulated entities.”⁵⁴

Upending the rules which have enabled successful appeals has the following risks.

Preventing wrong decisions from being overturned and corrected.

If the proposed standard were applied to recent appeals and redeterminations:

- Vital investments to secure water supplies would not have happened:** For example, in 2024, despite repeated water supply outages at Bewl Water Treatment Works which hugely inconvenienced people and businesses, Ofwat refused to authorise any investment by South East Water to upgrade the facility and increase the supply and the resilience of the supply of water. South East Water requested a redetermination. During the redetermination, despite a further two water outages, Ofwat continued to argue that the company had “not provided sufficient and convincing evidence to demonstrate the need for the enhancement investment.”⁵⁵ The company set out that the upgrade would deliver ‘new water’, but Ofwat argued that, “this term was not defined and the differentiation between moving water and protecting sources, and the ability to provide new water had not been evidenced.”⁵⁶ The Competition and Markets Authority entirely overturned Ofwat’s decision allowed its request for £26.7 million in full. In making its decision, the Competition and Markets Authority did not find that Ofwat’s decision was ‘materially wrong’. Instead, it ‘redetermined’ the matter by independently looking at the evidence submitted by South East Water. Such an outcome would have been seemingly impossible if the legal standard used in telecommunications had been in place.
- £1.6 billion of corrections would not have been made.** The last three water redeterminations in England increased revenues by £463 million in PR24, £516 million at PR19 and £19 million at PR14 and those changes could not reasonably be expected to have been made under the proposed standard.⁵⁷ In addition, an assessment by Towerhouse LLP found that a range of regulatory appeals across the energy and aviation sectors since 2015

⁵⁴ [‘Response to the UK Government’s ‘Streamlining Regulatory and Competition Appeals’](#), pg.44, *Competition Appeal Tribunal*, (March 2026).

⁵⁵ [‘Water PR24 References – Final Determinations Volume 2: Enhancement Costs – Chapter 5’](#), pg.210, *Competition and Markets Authority*, (March 2026).

⁵⁶ [‘Water PR24 References – Final Determinations Volume 2: Enhancement Costs – Chapter 5’](#), pg.211, *Competition and Markets Authority*, (March 2026).

⁵⁷ [‘Water PR24 References: Final Determinations - Summary’](#), pg. 11, *Competition and Markets Authority*, (March 2026); [‘Anglian Water Services Limited, Bristol Water plc, Northumbrian Water Limited and Yorkshire Water Services Limited Price Determinations - Summary of Final Determinations’](#), pg. 30, *Competition and Markets Authority*, (March 2021); [‘Price review 2024 - company appeals update’](#), *Ofwat*, (February 2025).

would be unlikely to have been overturned under the proposed standard – at least £615 million of corrections (see Table 5 in Annex 2).

- **Bad policies would not have been overturned.** The Competition and Markets Authority has a positive track record of overturning decisions that it considers drives poor outcomes, such as underinvestment or excessive risk. These changes have often forced sector regulators to make better decisions at future price controls, and in some cases driven new regulatory policy approaches across sectors. Some of the decisions that have been overturned include Ofgem’s proposed ‘outperformance wedge’ at RIIO-2, Ofwat’s calibration of performance incentives at PR19 and PR24, and a fresh approach to equity return calculations (which has since been taken forward for consultation by the UK Regulators’ Network).⁵⁸

Weakening the level of accountability for regulators – most significantly in the water sector

Requiring appellants to demonstrate that a regulator has made an error that was “materially wrong”⁵⁹ would give inherent primacy to the regulator’s initial decision, making it harder to overturn decisions and removing the ability of the appellate body to consider issues ‘in the round’ unlike under a redetermination standard.

While the proposed standard seems similar to the energy standard – they are both based on correcting errors – the proposed standard has fewer grounds of appeal, and the reference to deciding appeals ‘judicial review principles’ would restrict the breadth of appeals that could be advanced.

Driving significant costs for companies, investors and consumers

Although fewer appeals may save some money, the overall consequences of the proposed standard will be far more costly. As appeals will be made much harder to launch and win, price controls will necessarily involve much higher stakes. Companies will be forced to spend far greater sums to try and ensure regulators do not make mistakes as they currently do. Should an appeal be needed, companies will have to be able to draw upon far greater documentation to prove ‘materially wrong’ decisions which will necessitate considerably higher costs.

While it is hard to estimate these potential costs, the 16 water companies in England and Wales spent more than £250 million preparing business plans for PR24.⁶⁰ Even a 10% increase in costs would more than outweigh any notional saving from a shorter appeal process. Any additional business plan costs under this scenario would also apply to the 14 corporate groups in the electricity and gas transmission and distribution sectors and other licence holders in the aviation and postal sectors. In addition, the introduction of a new standard may drive a wave

⁵⁸ ‘UKRN Cost of capital – review of guidance on methodology for setting cost of capital consultation’, UK Regulators Network, (June 2026).

⁵⁹ ‘Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement’, pg.69, Department for Business and Trade, (July 2026).

⁶⁰ ‘A Reset for Water: Water UK’s response to the Independent Water Commission’s Call for Evidence’, pg. 18, Water UK, (April 2025).

of litigation as appellants seek to test how it is applied in practice, which could create further unintentional costs.

The available evidence also casts doubt on the suggestion that a framework overseen by the Competition Appeal Tribunal would reduce the cost of an appeal. Analysis undertaken by Towerhouse LLP concludes that appeals concerning price controls heard by the Competition Appeal Tribunal under a 'judicial review plus' standard would likely be substantially more expensive than comparable Competition and Markets Authority regulatory appeals because they would rely on a much more formal, lawyer-led process.⁶¹ Comparative analysis by Towerhouse LLP suggests that a reasonably complex Competition Appeal Tribunal appeal could cost an appellant around £4.4 million, compared with around £1 million under a comparable Competition and Markets Authority process. The difference is driven by the additional layers of legal representation, more intensive procedural requirements and the adversarial nature of Competition Appeal Tribunal proceedings. Towerhouse LLP therefore concludes that it is highly unlikely that the consultation's proposed framework would be cheaper than the current arrangements.

Even if all of these additional costs are discounted, the costs are far exceeded by the value of effective appeals. Over the last decade, the total cost of regulatory appeals across affected sectors was approximately £96 million, compared with more than £1.6 billion of regulatory decisions that were altered or corrected through appeals and redeterminations.⁶² The value of the decisions corrected was, therefore, more than 15 times greater than the cost of the appeals themselves. This comparison also excludes the much wider benefit of ensuring vital investments to secure water supplies are not obstructed by poor regulatory decisions, flawed policies are overturned, and that investors retain confidence in the regulatory framework supporting hundreds of billions of pounds of long-term infrastructure investment. This alone should be enough to dismiss the suggestion that the proposal would save money (especially if value is valued over price).

Creating significant uncertainty given it is untested on utility and aviation price controls

The current telecoms standard was only introduced in 2017, and only two cases have been considered under the new standard, none of them price controls.⁶³ In both cases, the Competition Appeal Tribunal ruled against the appellants and in favour of Ofcom. In the context of more than £550 billion of private investment being determined over the next decade in the water, energy and aviation sectors, applying the same standard would introduce significant risk and uncertainty.

⁶¹ 'How to improve regulatory appeals: a report by Towerhouse LLP', *Towerhouse LLP*, (September 2026).

⁶² See Table 3 in Annex 1 and Table 4 in Annex 2.

⁶³ '[TalkTalk Telecom Group plc and Vodafone Limited v Office of Communications](#)', *Competition Appeal Tribunal*, [2020] CAT 8; '[CityFibre Limited v Office of Communications](#)', *Competition Appeal Tribunal*, [2022] CAT 33.

3.4 Why redeterminations are our preferred model

Unlike regulatory appeals in other sectors, which are generally focused on whether a regulator has made a specified error, redeterminations of price controls in the water sector require the appellate body to produce a fresh decision under the same legal duties and objectives of the original regulator.

We consider this to be an important feature of the regulatory framework. Price controls include a series of interrelated judgments across expenditure allowances, financing and performance incentives. Redeterminations enable an appellate body to take its own view on the substance of the issues at hand, consider those issues in the context of other decisions (enabling an ‘in the round’ decision, which reflects the interrelated nature of price controls) and to have regard to the forward-looking consequences of its decisions, rather than be constrained to only look back at the decisions made by the original regulator.

Redeterminations can require significant resources, as highlighted by the Independent Water Commission.⁶⁴ While it is true that the number and, therefore, costs of redeterminations have increased in recent water price controls, it is because the regulatory framework has increased in complexity and – as demonstrated by the Competition and Markets Authority’s decisions in those redeterminations – there were significant issues that needed to be overturned. Should the stability and effectiveness of the regulatory framework be restored following reforms to the water sector planned by the UK and Welsh Governments, we would expect to see the number of redeterminations reduce and therefore related costs. We also note that, in practice, the Competition and Markets Authority has taken a pragmatic approach to redeterminations, ensuring that it does not revisit every issue and so keeping redeterminations processes relatively proportionate.⁶⁵

Should the UK Government seek to apply a consistent standard to regulatory appeals across sectors, we recommend that it considers applying the redetermination standard – where a fresh decision would be taken, in line with the statutory duties and objectives that would apply to the original regulator. To be proportionate, this standard could be applied to price control decisions only.

As we set out in Section 7, it is our strong view that should the UK Government choose an alternative approach that it, at the very least, maintains the redeterminations standard for the next water price review, expected in 2029, for the reasons we set out in that section.

3.5 Alternative ‘focused’ reforms

We recognise the UK Government, albeit it under a different Prime Minister, said that it would replace the redeterminations process in the water sector with a “more focused appeals process” in its Water White Paper in January 2026.⁶⁶ Also prior to a change of administration,

⁶⁴ [‘Independent Water Commission: Final Report’](#), pg. 224, *Independent Water Commission*, (July 2025).

⁶⁵ [‘Water PR24 Redetermination References: Approach and prioritisation’](#), pg. 9, *Competition and Markets Authority*, (May 2025).

⁶⁶ [‘A New Vision for Water’](#), pg. 29, *UK Government*, (January 2026).

the Welsh Government noted this proposal, and said it would work with the UK Government to ensure that “any new dispute resolution process is developed jointly” and that “any changes to the dispute resolution framework do not undermine the effectiveness of Welsh regulation or the rights of Welsh consumers and companies.”⁶⁷

If there is to be a focused appeals system for the water sector in England and Wales, then we recommend that the UK Government consider adopting alternatives to the standard that it has proposed in the Business Department’s consultation. We discuss the following options in turn:

- Option 1 – ‘Focused’ redeterminations.
- Option 2 – Bespoke standard.
- Option 3 – Energy-style specified grounds.

Option 1 – ‘Focused’ redeterminations

The first option would retain the core principle of a redetermination, while narrowing the issues that the appellate body is required to determine.

This approach is similar to a proposal made by John Earwaker and Susanna Rogers in 2025. They suggested that an appellant could ask an appellate body “to look afresh at specific, disputed parts of a regulator’s price control determination” and “assess whether a different decision in those specific areas could better meet the regulator’s statutory objectives and duties.”⁶⁸ Their proposal was explicitly intended as a middle ground between a full redetermination and an appeal to correct errors.

Under such an approach, the regulator’s decisions on matters that had not been challenged would not change. However, on issues brought before it, the appellate body would undertake its own substantive assessment and determine the outcome that best met the relevant statutory duties and objectives.

This option would preserve what we consider to be the principal benefit of redetermination – an independent body taking responsibility for reaching the appropriate outcome on the issues in dispute. It would address concerns about the breadth, cost and resource requirements of a full redetermination by focusing the process on a defined set of material issues.

The scope of appeals could be narrowed further, potentially through procedural rules. For example, permission to appeal could be required and/or a materiality threshold could apply.

This option would most closely preserve the benefits of a redetermination while also delivering the objective of a more focused process than currently exists in the water sector in England and Wales.

Option 2 – Bespoke standard

⁶⁷ ‘Green Paper: Shaping the Future of Water Governance in Wales’, pg. 43, *Welsh Government*, (February 2026).

⁶⁸ ‘The Statutory Framework for Price Control Appeals in the UK’s Regulated Industries’, pg. 17, *First Economics*, (October 2025).

A second option would be to take the opportunity presented by the UK Government’s reforms to develop a bespoke standard for regulatory appeals that takes from the best features of existing standards, incorporates recent case law and overcomes the weaknesses of other proposals. In particular, it would set out the *intensity* of review as well as the grounds, to provide a clear indication of how the appellate body is expected to examine an issue and potentially substitute its own decision.

We have commissioned Towerhouse LLP to consider what such a standard could look like. Table 1 sets out potential drafting and accompanying rationale.⁶⁹

We recognise that under this option, while it builds on features of existing standards, it would still involve some familiarity and uncertainty as it beds in across the regulated sectors.

Table 1: Potential harmonised standard

Proposed standard	Rationale
1) The Appeal Body must allow the appeal if and to the extent that it determines that there is a material error [the regulator “has got something materially wrong”] in the decision which is the subject of the appeal (“Decision”);	<i>Describes the task of the Appeal Body in plain language</i>
2) The Appeal Body must decide that there is a material error if (without limitation): a. It is satisfied that the decision does not properly give effect to the Authority’s statutory duties or any guidance to which the Authority is required or entitled to have regard; b. That the decision was based, wholly or partly, on an error of fact; c. That the decision was wrong in law; d. That the decision will not have the effect stated by the Authority; e. That an error was made in the exercise of a discretion [or “that an error of judgement was made”]; and/or, f. That the decision was disproportionate.	<i>A non-exhaustive list of reasons why the Appeal Body may decide there is a material error.</i> <i>a. - d. are taken from the Energy Sector</i> <i>e. is from civil aviation</i> <i>f. is from digital markets</i>
3) In making a determination under subsection (1), the Appeal Body must: a. make its own assessment of the errors alleged in the Notice of Appeal, in detail and on the evidence; b. ensure that the merits of the case are duly taken into account so that there is an effective appeal; and	<i>This combines aspects of (a) the Admin Court’s decision in WWU; (b) the merits requirement of the telecoms standard, and (c) wording</i>

⁶⁹ For more information, see an annex prepared for Water UK: ‘An improved standard of review for regulatory appeals’, Towerhouse LLP, (September 2026).

Proposed standard	Rationale
1) The Appeal Body must allow the appeal if and to the extent that it determines that there is a material error [the regulator “has got something materially wrong”] in the decision which is the subject of the appeal (“Decision”);	<i>Describes the task of the Appeal Body in plain language</i>
2) The Appeal Body must decide that there is a material error if (without limitation): a. It is satisfied that the decision does not properly give effect to the Authority’s statutory duties or any guidance to which the Authority is required or entitled to have regard; b. That the decision was based, wholly or partly, on an error of fact; c. That the decision was wrong in law; d. That the decision will not have the effect stated by the Authority; e. That an error was made in the exercise of a discretion [or “that an error of judgement was made”]; and/or, f. That the decision was disproportionate.	<i>A non-exhaustive list of reasons why the Appeal Body may decide there is a material error.</i> <i>a. - d. are taken from the Energy Sector</i> <i>e. is from civil aviation</i> <i>f. is from digital markets</i>
c. apply those statutory duties which were applicable to the Authority when it made the Decision.	<i>adopted from the energy standard</i>

Option 3 – Energy-style specified grounds

A third option would be to use the existing energy appeals regime as the basis for a common standard.

The energy framework is already a focused appeal rather than a redetermination. An appellant must establish that the regulator was wrong on one or more specified grounds. These grounds include failures to properly have regard to or give appropriate weight to statutory duties or objectives, that the stated effect would not be achieved, errors of fact and errors of law.⁷⁰ This approach would focus an appeal on identified errors with some consideration of the regulatory judgment underlying them.

Recent case law has also clarified the intensity of review under this option. In *Wales & West Utilities v CMA*, the High Court rejected an approach under which an appellant would effectively need to demonstrate that its alternative was “clearly superior”. The Court held that an alternative approach being “materially better” than the regulator’s initial decision can be sufficient for the appellate body to conclude that the regulator was wrong.⁷¹ However, as the

⁷⁰ See, for example, [Section 23D\(4\)](#) of the Gas Act 1986.

⁷¹ *‘Wales & West Utilities Limited, R (on the application of) v Competition and Markets Authority’*, [2026] EWHC 99 (Admin), paragraph 158, (January 2026).

recent gas sector appeals appear to show, it has proven to have had limited effect in overturning Ofgem’s decision to set an ongoing efficiency challenge of 1% a year, despite the Competition and Markets Authority concluding earlier in the year that 0.7% was appropriate for water companies in England.⁷²

To provide a higher level of clarity for stakeholders, including regulated firms, regulators and investors, it would be advantageous to codify this clarification on the face of the legislation. However, this standard would still apply a ‘wrongness’ test to regulators, maintaining a level of deference to regulators’ decisions even if they are based on poor judgments that may not ultimately enable the delivery of statutory objectives.

Relative to the other options, this option has the advantage of being an existing standard with a clear track record, is already applied to price control decisions, and is very similar to the standard that already applies to licence changes for water companies in England.⁷³ It is also similar to the appeal regime in airports.⁷⁴ Introducing this standard to other sectors would therefore reduce stakeholder uncertainty.

Our assessment

Our preference remains to retain the redetermination standard for all price control decisions. Should the UK Government decide to implement a focused appeals model, we recommend that the UK Government pursues a ‘focused’ redetermination (i.e. Option 1) as the most robust safeguard against regulator’s decisions, which is most likely to deliver the statutory duties and objectives for the sector where a decision is being appealed. Compared to full redeterminations, it would help to focus the process and reduce costs.

Should the UK Government seek to move to a standard based on proving ‘wrongness’ then we recommend that the UK Government considers either Option 2 or Option 3. The proposed ‘judicial review plus’ standard would not be acceptable for the reasons we have outlined above. Both options would also helpfully set out the additional grounds for a potential appeal, helping to provide transparency and certainty for investors.

By explicitly recognising the *intensity* of review within the standard, including for the appellate body to “make its own assessment” and to “carefully consider the merits of the case” we believe that Option 2 would be better at holding regulators to account for their decisions than Option 3. However, should the UK Government seek to minimise the potential time taken to transition to a new standard, then we can see the case for adopting Option 3 given it is a reasonably well-established standard and already exists in some form in the energy and aviation sectors.

⁷² ‘[Water PR24 references: Final Determinations - Summary](#)’, pg. 17, *Competition and Markets Authority*, (March 2026).

⁷³ For example, see [section 12F\(4\)](#) of the Water Industry Act 1991.

⁷⁴ For example, see [section 26](#) of the Civil Aviation Act 2012.

3.6 Effective remedies

An effective appeals framework must be able to identify regulatory errors and correct them. We do not support the consultation proposal that remittal to the original regulator would be the only remedy available following a successful appeal.

Remittal will be appropriate in some cases. Where correcting an error requires further consultation, evidence or the exercise of regulatory judgment that the regulator is best placed to undertake, it could make sense to remit the matter to the sector regulator.

However, we are seriously concerned that mandatory remittal would have the following effects.

Be extremely inefficient and wasteful

Where an appellate body has already considered the relevant evidence, identified the error and is able to correct the error, requiring a further regulatory decision would simply duplicate activity.

Delay resolutions and prolong uncertainty

Figure 3 below maps the statutory timeframes within which the Competition and Markets Authority must reach a final decision across the water, energy and aviation sectors to the actual length of appeals at the Competition Appeal Tribunal. In the absence of statutory timeframes, decisions remain open-ended which will increase uncertainty.

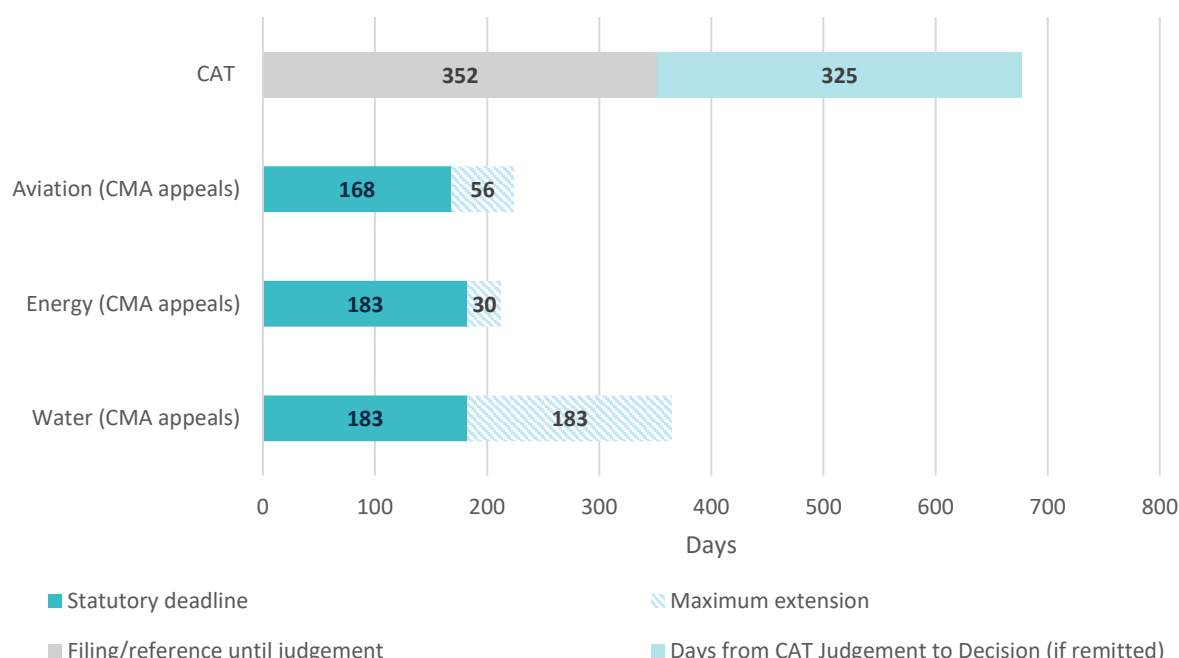
Remittals can compound this uncertainty, as they have been shown to extend the time required to resolve a regulatory dispute. A representative sample of remittals from both the Competition Appeal Tribunal and Competition and Markets Authority also show an average of 315 days from judgment until decision.⁷⁵ In a challenge to a 2007 decision, Vodafone won its appeal and the Competition Appeal Tribunal remitted the matter to Ofcom. A further process was then undertaken by the regulator in implementing the remittal which it completed in 2010. The total time taken on the remittal was 658 days.⁷⁶ In *Sky v Ofcom*, it took 303 days before the Competition Appeal Tribunal's remedy was applied after its judgement.⁷⁷

⁷⁵ See Annex 4 of 'How to improve regulatory appeals: a report by Towerhouse LLP', *Towerhouse LLP*, (September 2026).

⁷⁶ 'Changes to the Mobile Number Porting Process', *Ofcom*, (July 2010).

⁷⁷ 'Sky UK Limited v Office of Communications', *Competition Appeal Tribunal*, [2024] CAT 54.

Figure 3: Average length of appeals at the CAT and statutory time limits for appeals at the CMA⁷⁸



Source: Water UK and Towerhouse analysis

Delays are particularly consequential for price controls, where there have been delays – the Competition and Markets Authority took the unusual step of remitting its redetermination of the H7 Heathrow price control to the Civil Aviation Authority in October 2023, which was only implemented after 263 after a subsequent consultation in early 2024.⁷⁹ Similarly, when the Competition Commission found an error in fault rates underpinning Ofcom’s 2012 LLU/WLR charge control but could not quantify the correction, the issue was remitted to Ofcom and the correction took effect almost 8 months later (and with just over three months of the final charge control year remaining).^{80,81} Individual decisions on expenditure, efficiency, financing and incentives often interact, and resolving an appeal may require the appellate body to determine how an identified error should feed through into the wider settlement. Quashing a decision without providing an effective means of correcting it would simply prolong uncertainty and undermine investment.

⁷⁸ Based on 60 telecoms appeals at the Competition Appeal Tribunal.

⁷⁹ The Competition and Markets Authority published its H7 Heathrow Licence Modification Appeals Final Determinations on 17th October 2023. The Civil Aviation Authority published a consultation (CAP2980) on the remitted matters on 20th March 2024 and published its final decision (CAP3001) on 11th July 2024.

⁸⁰ Ofcom attributed the delay to an incomplete response to its information request, illustrating how remittals leave the resolution of an appeal dependent on further regulatory process outside the appellate body’s control.

⁸¹ Competition Commission, Determination in Cases 1192/3/3/12 and 1193/3/3/12 (27 March 2013), paras 14.184–14.187; British Sky Broadcasting Ltd and TalkTalk Telecom Group plc v Ofcom [2013] CAT 8, Annex, para 3; Ofcom, "BT remittal data request", Enforcement Bulletin (closed 17 March 2014).

It is instructive that, when confronted with delays remittals cause, the Competition and Markets Authority dismissed the concerns as being irrelevant. In its evidence to the House of Lords inquiry which examined the issue, it argued that, “...the remittal is an administrative process undertaken by the CMA rather than a judicial one undertaken by the Tribunal.”⁸² In any case, this is not the case as the Competition Appeal Tribunal is able to substitute decisions in competition cases.

Potentially leave some decisions unresolved

There is no guarantee that the sector regulator will faithfully resolve issues that are remitted to it, even if the appellate body provides directions as part of its remittal. There have been instances where a decision is quashed, but the order is ambiguous and the regulator then issues a fresh decision which is very close to the original. For example, in the H7 Heathrow price control, the Competition and Markets Authority found that the Civil Aviation Authority had erred in failing to verify the underlying calculation of its 0.87% ‘Shock Factor’ applied to passenger forecasts and remitted the issue to the regulator.⁸³ Following further consultation, the Civil Aviation Authority decided to retain a shock factor of exactly 0.87% and treated airlines’ substantive concerns as outside the scope of remittal.⁸⁴

While a sector regulator’s subsequent decision could be appealed to the courts, that would add yet more unnecessary stages and delays when a substituted decision would be a much better mechanism for resolving issues.

Our recommendation

We therefore recommend that the appellate body should be able to substitute its own decision, just as the Competition and Markets Authority is able to do for existing regulatory price control appeals, and the Competition Appeal Tribunal can do for competition law cases.⁸⁵ Remittals should still be allowed, for example where an issue genuinely requires further regulatory judgment or consultation. Where matters are remitted, the appellate body should be required to give clear directions on the issues that must be reconsidered and the regulator should be subject to a clear timetable for reaching a revised decision.

This approach should ensure that a successful appeal leads to an effective and timely resolution, providing certainty and closure for all stakeholders involved.

⁸² ‘Supplementary written evidence to the House of Lords Communications and Digital Select Committee inquiry ‘Review of the Digital Markets, Competition and Consumers Bill’, *Competition and Markets Authority*, (July 2023).

⁸³ Competition and Markets Authority, *H7 Heathrow Licence Modification Appeals: Order of the CMA* (17 October 2023), paras 6–7; Competition and Markets Authority, *Final Determination* (17 October 2023), para 9.306

⁸⁴ Civil Aviation Authority, *Economic regulation of Heathrow airport: H7 final issues – decision* (CAP3001, July 2024), paras 3.17–3.21

⁸⁵ For example, see: [section 23E\(2\)\(c\)](#) of the Gas Act 1986; [section 11F\(2\)\(c\)](#) of the Electricity Act 1989; [schedule 8, paragraph 3\(2\)\(d\)-\(e\)](#) of the Competition Act 1998.

4. Appellate body and procedures

4.1 Features of an effective appellate body

The consultation proposes transferring responsibility for regulatory appeals currently determined by the Competition and Markets Authority to the Competition Appeal Tribunal.

In our view, the question is not simply where regulatory appeals are located institutionally. It is whether the body hearing an appeal has the independence, expertise, resources, procedures and powers necessary to scrutinise complex regulatory decisions effectively.

Price controls involve detailed questions of economics, regulatory finance, accounting, engineering, forecasting and operational delivery. Other decisions, such as licence changes, may also require expertise, for example if they relate to financial resilience. In our view, an effective appellate body therefore needs:

- **Independence and credibility.** It must be demonstrably independent from the regulator whose decision is being challenged and command confidence amongst regulators, regulated companies, investors and other stakeholders.
- **Legal and regulatory expertise.** Appeals can involve difficult questions of statutory interpretation and regulatory powers, alongside detailed questions about the operation of economic regulation.
- **Economic, financial and technical capability.** Expertise is needed across both panel members and the teams that support them. Price controls require the capacity to interrogate models, undertake financial and economic analysis and understand practical engineering and operational consequences.
- **The ability to investigate issues actively.** The body should be capable of testing evidence, asking its own questions and engaging directly with management and technical experts, rather than being limited to choosing between cases presented by opposing parties.
- **Flexible and proportionate procedures.** Different disputes require different approaches. Questions of law may be suited to conventional legal submissions and cross-examination; disputes about economics, finance or engineering are likely to be better resolved through direct engagement with experts and less formal processes.
- **Predictable timetables and effective powers.** Appeals should be resolved within clear timescales and, as set out in Section 3.6, the appellate body should be able to directly substitute decisions.

4.2 Institutional options

We note that there are options for where the regulatory appeals function could sit, irrespective of wider decisions on the standard or other matters in the consultation.

Different options will involve different degrees and types of institutional change. As we set out in Section 2.2, we note that while the consultation proposes to transfer responsibility for regulatory appeals from the Competition and Markets Authority to the Competition Appeal

Tribunal for some sectors, it would still retain responsibility for regulatory appeals for other jurisdictions in the water sector in Scotland and Northern Ireland; as well as the payment systems sector across the United Kingdom (for certain decisions).⁸⁶

We consider three options for relocating the regulatory appeals function:

- Option 1 – Retaining the role of the Competition and Markets Authority
- Option 2 – Establishing a new Office for Regulatory Appeals
- Option 3 – Enhancing the existing capability of the Competition Appeal Tribunal, particularly as it relates to price control matters

Option 1 – Competition and Markets Authority

The least disruptive option would be to retain regulatory appeals within the Competition and Markets Authority.

The current model has developed over many decades specifically to determine complex competition and regulatory matters. Regulatory appeals are determined by independent groups, supported by a staff team and analytical resources from across the Competition and Markets Authority. This approach allows the appellate body to undertake its own investigation of disputed issues rather than relying solely on analysis or evidence presented by disputing parties.

The process also directly engages with management teams, economists, engineers and other specialists. This is valuable where a dispute turns on the practical consequences of a regulatory decision or on competing methodologies rather than principally on a question of law.

In addition, the Competition and Markets Authority is well regarded among regulated companies, investors and credit rating agencies – precisely because of its track record and the demonstration of the approach it has developed over many decades.

This option would preserve these features while avoiding the costs and disruption involved in transferring functions to another organisation. It also has the added advantage of being better able to manage peak workloads, as internally transferring staff among the 1,000 full-time employees at the Competition and Markets Authority would be less disruptive than other options. We note that the Competition and Markets Authority has long campaigned to have its role in regulatory appeals removed – it has argued that it should, instead, be able to “...put more resources into the investigation and remedy of consumer detriment.”⁸⁷ We do not consider that to be a sufficient reason to accede to its wish – the Competition and Markets Authority is able to recover its costs from regulatory appeals and redeterminations, and should the function be transferred to another body, then the funding should follow too.

⁸⁶ See [section 79](#) of the Financial Services (Banking Reform) Act 2013.

⁸⁷ ‘[Letter to the Secretary of State for Business, Energy and Industrial Strategy](#)’, pg.40, *The Rt Hon Lord Tyrie*, (February 2019).

The consultation notes that the UK Government has recently consulted on reforming the role of ‘inquiry group’ panel members in merger and market cases, which is similar to the panels used for regulatory appeals within the Competition and Markets Authority. The consultation suggests that “retaining the inquiry group model solely for Regulatory Appeals would likely place an unnecessary burden on the [Competition and Markets Authority], reduce the number of experts available to sit in sub-committees and create unnecessary complexity by retaining multiple decision-making models across [Competition and Markets Authority] functions.”⁸⁸ We do not agree with this observation. Given the importance of expert-led regulatory appeals in driving independent and effective decisions, we believe that it is justified to retain specialist panels members for regulatory appeals, particularly as the legislative requirement for the use of them is distinct to merger and market cases.⁸⁹

Option 2 – Office for Regulatory Appeals

Should the UK Government remain committed to removing regulatory appeals for the sectors in scope of the consultation from the Competition and Markets Authority, another approach would be to establish a dedicated specialist body with responsibility for regulatory appeals across sectors.

Such a body would preserve the features of the Competition and Markets Authority as set out in Option 1 above, with no need to fundamentally change the workings of an existing body (the Competition Appeal Tribunal).

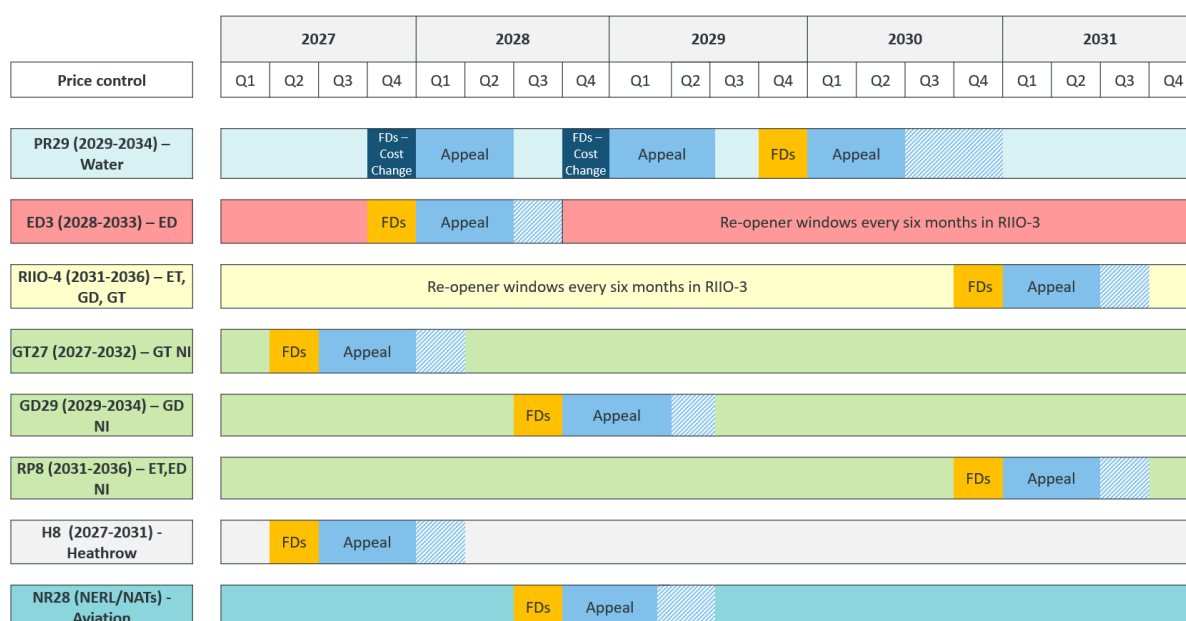
Establishing an ‘Office for Regulatory Appeals’ could send an important signal to stakeholders, including investors, that regulatory appeals would be taken seriously by a specialist, dedicated body.

We acknowledge that the UK Government would have to consider carefully whether establishing a new body would be justified in terms of resources and costs, particularly with respect to future workloads. Given the scale of future investment across all sectors of the economy, and the cycle of price reviews and annual reopener processes that are now the norm in water and energy – which can be appealed – we consider there is sufficient workload to justify a bespoke body, as set out in Figure 4.

⁸⁸ ‘[Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement](#)’, pg.60, paragraph 169, Department for Business and Trade, (July 2026).

⁸⁹ See: [Paragraph 35\(1\)\(c\) of Schedule 4](#) of the Enterprise and Regulatory Reform Act 2013.

Figure 4: Indicative timing of price control determinations and potential regulatory appeals, 2027-2031⁹⁰



FDs = Final Determinations, shading following the FD indicates the potential period for a CMA appeal and any applicable statutory extension. ED = Electricity Distribution, ET = Electricity Transmission, GT = Gas Transmission, GD = Gas Distribution, NI = Northern Ireland.

The UK Government could consider allocating additional functions to such a body, such as oversight of the performance of regulators – as recommended by Dame Julia Black and the Public Accounts Committee when considering an ‘Office of Regulatory Performance’.⁹¹

Option 3 – Enhanced Competition Appeal Tribunal

The Competition Appeal Tribunal is an experienced specialist judicial body with panel members drawn from legal, economic, business and accountancy backgrounds.

However, determining major regulatory appeals requires more than appropriately qualified tribunal members. The existing Competition and Markets Authority model provides dedicated multidisciplinary teams capable of undertaking detailed economic, financial, regulatory and technical analysis in support of the decision-making panel.

The Competition Appeal Tribunal does not currently replicate that model. Currently, price control matters in telecoms appeals are referred by the Competition Appeal Tribunal to the Competition and Markets Authority.⁹² The Competition Appeal Tribunal’s institutional

⁹⁰ Timing is indicative and based on the latest available published regulatory timetables; actual appeal timing will depend on whether an appeal is filed. The period immediately following the publication of a final determination will include the applicable window for companies to file a reference/seek permission to appeal, before an appeal period begins. Note that re-opener application windows generally occur in April and October, although not every re-opener is available in every window. Ofgem may implement adjustments by ‘direction’ rather than statutory consultation and license modification if certain conditions are met, only the latter may give rise to a statutory CMA appeal.

⁹¹ ‘Who watches the watchdogs?’, pg. 47, *House of Lords*, (February 2024).

⁹² Under Section 193 of the ‘[Communication Act 2003](#)’, s.193, (July 2003).

purpose and procedures are judicial – a tribunal determines disputes brought before it by the parties. In contrast, complex regulatory appeals often require a more investigative or inquisitorial process in which the decision-making body develops its own understanding of the underlying regulatory issue, tests methodologies and assumptions and forms an independent view. The Competition Appeal Tribunal itself recognised this in its own response to the 2013 consultation on streamlining regulatory and competition appeals, noting that *“the CAT and the CC/CMA should not be viewed as simple substitutes for one another, and that the CMA’s processes would probably be suitable for the handling of complex price control assessments and other similar matters requiring very detailed expert investigation and assessment.”*⁹³

Simply transferring existing Competition and Markets Authority responsibilities on regulatory appeals to the Competition Appeal Tribunal, without corresponding changes to its resources and procedures, would likely reduce the specialist analytical capability available to regulatory appeals.

For these reasons, we do not support transferring regulatory appeals to the Competition Appeal Tribunal in its current form. Should the UK Government wish to proceed with this option, significant changes would be needed in line with the features we set out in Section 4.1. This would amount to more than a simple transfer of jurisdiction. The UK Government would in effect need to create a specialist regulatory appeals capability within or alongside the Competition Appeal Tribunal.

Our assessment

Whichever organisation is made responsible for regulatory appeals, we strongly recommend that the UK Government ensures that the existing specialist regulatory appeals capability is preserved in substance.

The simplest, and least costly, way to do so would be to retain the regulatory appeals function for the sectors in scope of this consultation within the Competition and Markets Authority. That must include retaining an independent panel of sector regulation experts that is focused on regulatory appeals, regardless of wider changes to panels for merger and market cases.

⁹³ ‘[Streamlining Regulatory And Competition Appeals](#)’ (Government Consultation Of 19 June 2013), pg.15, *Competition Appeal Tribunal*, (June 2013).

5. Expert evidence and hearing procedures

5.1 Expert evidence

The consultation also seeks views on the procedural rules that should apply to future appeals, including whether parties should be permitted to submit new evidence and whether expert witnesses should be tested through cross-examination. These procedural choices are important because they directly affect the ability of the appellate body to scrutinise complex regulatory decisions, form an independent view on the issues in dispute and resolve appeals efficiently.

We support allowing new evidence to be submitted where it is relevant and necessary to determine the issues in dispute. Regulatory decisions are frequently forward-looking, and relevant evidence may emerge after the regulator reaches its original decision. The appellate body should have discretion to admit such evidence while preventing tactical or unnecessary submissions.

We also support permitting cross-examination of witnesses, but it should not become the default mechanism for testing every regulatory issue. It may be valuable where factual evidence is contested or credibility is relevant. Other questions, such as on economic, financial or technical issues, may be resolved more effectively through direct questioning by the appellate body, expert discussions or other less adversarial procedures.

The appellate body should therefore have flexibility to choose procedures appropriate to the dispute. In complex price-control cases this should include powers to:

- engage directly with management and technical specialists;
- require further evidence or analysis where necessary;
- facilitate expert-to-expert discussion of competing assumptions and methodologies; and
- focus hearings and written submissions on the issues most likely to affect the outcome.

This would help ensure that appeals are both rigorous and proportionate, reducing unnecessary legal process while preserving the depth of scrutiny required for complex regulatory decisions.

5.2 Statutory time limits

We strongly support the UK Government's objective of resolving regulatory appeals more quickly.

However, we are concerned that the consultation does not propose to set statutory time limits, which are the practice in regulatory appeals. Currently, water redeterminations must be completed within 6 months (with a potential extension of 6 months). Energy price control

appeals must be completed within 6 months (with a potential extension of one month) and non-price control appeals within 5 months.⁹⁴

Time limits are particularly important in regulated sectors because of the role that major regulatory decisions play in supporting investment and economic efficiency. Price controls determine revenues, financing and investment programmes over many years and cannot generally be revisited retrospectively. Delays in resolving appeals therefore create prolonged uncertainty for customers, investors, regulators and regulated companies and can undermine the effectiveness of the wider regulatory regime.

There is precedent for setting statutory or near-statutory time limits on judicial proceedings. While time limits are less common in ordinary litigation, Parliament has imposed them where there is a clear public interest in timely decision-making. Under this government, the Border Security, Asylum and Immigration Act 2025 introduced a time limit on certain immigration and asylum appeals, where the First-Tier Tribunal must determine the appeal and give notice of its determination to the parties within 24 weeks, except where it considers that it is not reasonably practicable to do so.⁹⁵ This example shows that it is possible to set time limits, including with a degree of flexibility, so that the relevant body can depart from the time limit where compliance is not reasonably practicable.

We therefore recommend that any legislation should:

- set a clear maximum period within which regulatory appeals must normally be determined;
- allow only a limited extension where there are defined and exceptional reasons for doing so; and
- impose a separate deadline on the regulator where an issue is remitted for reconsideration following a successful appeal.

The appropriate timetable may vary depending on the nature and complexity of the decision being challenged. However, we recommend that at least the current timescales for price controls are retained.

5.3 Publication of decisions and reasoning

Redeterminations by the Competition and Markets Authority provide a significant level of transparency, however there is much less visibility for stakeholders under different models. For example:

- The provisional determination in the current gas sector appeal is a single four-page document, with no reasoning set out.⁹⁶ In contrast, the recent water redeterminations

⁹⁴ [‘Energy Licence Modification Appeals: Competition and Markets Authority Guide’](#), pg. 8, *Competition and Markets Authority*, (July 2022).

⁹⁵ See [section 49](#) of the Border Security, Asylum and Immigration Act 2025 which introduced a new [section 86A](#) into the Nationality, Immigration and Asylum Act 2002.

⁹⁶ [‘Energy Licence Modification Appeals 2026’](#), *Competition and Markets Authority*, (August 2026).

comprised 926 pages⁹⁷ and a further working paper of 53 pages.⁹⁸ The much greater detail provided through Competition and Markets Authority redeterminations helps companies, investors and other stakeholders understand what is required of them in future, reducing uncertainty and the time and cost involved in preparing subsequent regulatory submissions.

- The Competition and Markets Authority process also includes the publication of provisional determinations, providing parties with an important opportunity to identify factual errors, correct misunderstandings and respond to the Competition and Markets Authority's emerging reasoning before a final decision is reached. This opportunity for course correction has proved extremely valuable over many years. The Competition Appeal Tribunal process offers no equivalent safeguard. Under its current approach to regulatory appeals, the Competition Appeal Tribunal proceeds directly from hearings to a final judgment, without providing an advance indication of its intended conclusions. As a result, the proposed approach provides fewer opportunities to correct errors before they become final and would therefore significantly reduced transparency and accountability.

We are concerned that under the proposed approach, the visibility of decisions may become even more reduced, limiting the ability of third parties to understand and contribute to proceedings. It would also undermine any potential predictability and certainty for investors that a cross-sector approach is meant to elicit.

For these reasons, we believe that regulatory appeals, and the reasoning that underpins them, should be published in full, subject to appropriate protections for confidential and commercially sensitive information. A provision decisions stage should be required. Transparency is an important safeguard within any appeals framework, particularly where disputes concern complex questions of economic regulation and regulatory judgment.

We recommend that the UK Government ensures that under any reformed approach to regulatory appeals, full transparency is required that aligns with the approach currently taken for redeterminations.

⁹⁷ '[Water PR24 price redeterminations](#)', *Competition and Markets Authority*, (October 2025).

⁹⁸ '[Water PR24 References - Base Costs Modelling – Working Paper](#)', *Competition and Markets Authority*, (December 2025).

6. Scope, eligibility and participation

6.1 Decisions within scope of appeals

The consultation recognises that differences between existing appeal regimes “*make the system complex and difficult to navigate for stakeholders*” and that “*greater alignment across sectors can improve clarity, legal certainty and confidence*”. However, it is only proposing that certain matters move from the Competition and Markets Authority to the Competition Appeal Tribunal. For example, in water, decisions by Ofwat concerning in-period outcome delivery incentives would remain unaffected by the government’s proposed changes. Decisions by the Drinking Water Inspectorate and the Environment Agency which will transfer to the new integrated water regulator in England would also remain unaffected. Unless changed, the new water regulator will have some decisions under one set of rules and all other decisions under other rules.

Should the UK Government wish to proceed with applying a more consistent approach to regulatory appeals, then we suggest that it ensures that the scope of decisions that could be appealed include all relevant decisions made by a regulator. That would ensure that there would be complete consistency across all of the decisions that a regulator may make.

A proportionate way to do this would be through legislation, as has been done in the telecoms sector. For example, Section 192 of the Communications Act 2003 provides a right of appeal against nearly all decisions taken by Ofcom. The only exceptions are when Ofcom is bringing or carrying on any criminal or civil proceedings; acting in a legislative or quasi-legislative role in a way that has no immediate effect because it requires implementation through a further act or decision; or acting on behalf of government in some particular role such as giving effect to certain orders or regulations.⁹⁹ To be consistent, we recommend a similar approach be taken for decisions made by the sector regulators that are in scope of this consultation.

6.2 Eligibility to bring an appeal

The consultation proposes extending the right to appeal to persons whose interests are “materially affected” by a regulatory decision, including bodies or associations representing them. It also points to the Competition Appeal Tribunal’s ostensibly more permissive approach to interventions, which sets that parties with a “sufficient interest” may seek permission to participate.¹⁰⁰ In practice, it is rare for such permission to be granted in regulatory appeal cases. This point is illustrated by the telecoms appeal in which Sky UK Limited was refused permission to intervene by the Competition Appeal Tribunal even though it was a party to the contract which was the subject of the appeal.¹⁰¹ The rationale though is to create a more consistent framework across sectors and align appeals with the proposed transfer to the

⁹⁹ Water UK’s assessment of [section 192](#) of the Communications Act 2003.

¹⁰⁰ See [Competition Appeal Tribunal Rule 16](#).

¹⁰¹ See *CityFibre v Ofcom* [2022] CAT 8 para 47ff.

Competition Appeal Tribunal. The consultation also asks whether a permission to appeal and intervene stage should be retained.

We disagree with extending the rights to initiate appeals to persons whose interests are “materially affected” by a regulatory decision for these reasons:

- **Third parties actively participate in regulatory processes.** Third party interests are already well-represented within existing processes, and extending the right further risks enabling speculative or vexatious appeals lodged by some parties that would work against the UK Government's objective of a quicker, simpler and more proportionate framework.
- **Third parties actively participate in regulatory appeals.** For example, in the PR24 redeterminations, the Competition and Markets Authority engaged directly with the Consumer Council for Water and other consumer bodies through dedicated hearings and relied on their evidence in reaching its decisions.¹⁰² In the final determinations, submissions by the Consumer Council for Water were referenced 90 times. In addition, more than 230 submissions were made by third parties over the last three water redeterminations.
- **The proposals would undermine the consultation's own objectives by making appeals more complex, costly and time-consuming.** In sectors such as water, energy and telecoms, the concept of being “materially affected” could potentially extend to a very large proportion of the population. Expanding the pool of potential appellants and interveners would increase the workload of the appellate body, create greater scope for tactical, speculative or vexatious appeals, and increase the burden on all parties involved. Rather than simplifying the framework, the proposal risks making appeals slower, more expensive and less effective.

We therefore recommend that eligibility to appeal should remain focused on those directly affected by a regulatory decision. We note that for some sectors, third parties may be justified to have rights to initiate an appeal based on the market structure, such as the existence of upstream or downstream markets.¹⁰³

We support the proposal to include a ‘permission stage’ for all parties seeking to initiate or intervene in an appeal. That should ensure that appeals are avoided that may be trivial, vexatious or speculative, promoting proportionality by ensuring resources can be focused on issues of genuine significance.

6.3 Cost recovery

The consultation suggests that consumer bodies may be deterred from appealing due to the cost implications of losing. It indicates that a transfer to the Competition Appeal Tribunal, which is not required to recover its costs of hearing an appeal and has a wide discretion as to

¹⁰² ‘Water PR24 References Final Determinations Volume 1: Introduction, Background, Approach and Prioritisation, Base Costs - Chapters 1–4’, pg.16, *Competition and Markets Authority*, (March 2026).

¹⁰³ Airports, telecoms and electricity networks are examples of regimes with third parties downstream currently being allowed appeal rights.

costs, may help address this.¹⁰⁴ It invites views on cost recovery mechanisms and cost caps, but makes no specific proposals.¹⁰⁵

In considering the right approach to recovering the costs associated with an appeal, we note that:

- **The consultation has not demonstrated that the current costs framework prevents legitimate participation in regulatory appeals.** As set out above, consumer bodies and other stakeholders are already represented in regulatory appeals and redeterminations. There is no clear evidence that cost recovery is a barrier to their participation.
- **The risk of paying costs if an appeal fails is an important and proportionate discipline.** It discourages weak or speculative appeals and helps preserve the appellate body's resources for cases that raise genuine issues of substance. Weakening this discipline through cost caps or special protections for particular categories of appellant risks encouraging unmeritorious appeals. The UK Government's own experience of cost caps in judicial review shows the consequences of weakening this discipline. The review by Lord Banner KC found that fixed low-cost caps "*contributed towards the proliferation of challenges*" to Nationally Significant Infrastructure Project consent decisions,¹⁰⁶ and the Nuclear Regulatory Review observed that a cap "does not affect strong legal challenges, but may encourage weaker ones."¹⁰⁷
- **Unless they are changed, the cost recovery rules for the Competition Appeal Tribunal would expose taxpayers to unreasonable costs.** Regulatory appeals by the Competition and Markets Authority operate under clear 'outcome-linked' costs rules that provide certainty to participants and ensure that the costs of appeals are borne by those responsible for bringing or resisting them. By contrast, the Competition Appeal Tribunal does not recover its own costs and operates under a broad discretion as to costs, with no apparent link to volume or complexity of appeals.¹⁰⁸ Unless alternative arrangements are put in place, the practical effect of transferring appeals to the Competition Appeal Tribunal without any changes would be to put more costs onto taxpayers.

For these reasons, we recommend that:

- **Should the UK Government transfer appeals to the Competition Appeal Tribunal, there should be clear, outcome-linked costs rules.** The general principle should remain that costs follow the outcome, subject to the appellate body's discretion and adjustments made

¹⁰⁴ '[Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement](#)', pg.75, paragraphs 220-221, Department for Business and Trade, (July 2026).

¹⁰⁵ '[Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement](#)', pg.76, paragraphs 222, Department for Business and Trade, (July 2026).

¹⁰⁶ '[Independent review into legal challenges against Nationally Significant Infrastructure Projects](#)', paragraph 59, Lord Banner KC, (October 2024).

¹⁰⁷ '[Nuclear Regulatory Review 2025: Enabling nuclear delivery through regulatory reform](#)', pg.83, paragraph 343, John Fingleton, (November 2025).

¹⁰⁸ [Sections 12\(4\) and 13\(2\),\(5\)](#) of the Enterprise Act 2002.

where appeals are partially successful. This should apply to appellants, interveners and representative bodies.

- **Any new costs framework should continue to recognise the regulator’s role, in line with existing regimes.** While costs normally follow the outcome, the Competition Appeal Tribunal must consider whether a costs order would have a “chilling effect” on a regulator that has acted reasonably.¹⁰⁹ The Competition and Markets Authority applies the same test.¹¹⁰ Any such protection of the regulator should be clearly defined, should not apply where the regulator has acted unreasonably, and should not be extended to third parties.
- **Cost caps or special protections for particular types of appellants should not be introduced.** The appellate body’s discretion already provides flexibility, including to address hardship in individual cases. In addition, as the UK Government has recognised with respect to judicial review of infrastructure projects, cost caps can and are abused.

¹⁰⁹ In [Competition and Markets Authority v Flynn Pharma Ltd \[2022\] UKSC 14](#) at paragraph 97-98 and 103, the Supreme Court held there is no default position protecting regulators from adverse cost orders, and that any “chilling effect” cannot be assumed, and should be assessed against the circumstances of the case.

¹¹⁰ For example, see: [‘Energy Licence Modification Appeals: Competition and Markets Authority Rules \(CMA 70\)’](#), *Competition and Markets Authority*, (October 2022); [‘Water Appointment Modification Appeals: Competition and Markets Authority Rules’](#), rule 20.5(d), *Competition and Markets Authority*, (October 2022); [‘Energy Code Modification Appeals: Competition And Markets Authority Rules \(CMA 196\)’](#), *Competition and Markets Authority*, (January 2025); [‘Airport licence condition appeals rules \(CMA172\)’](#), rule 19.5(d), *Competition and Markets Authority*, (October 2022).

7. Transition and timelines

We note that the consultation says: “*subject to the outcome of this consultation, the government anticipates reform proposals would be taken forward via sector-specific legislation when Parliamentary time allows.*”¹¹¹

It is critical that any appeal reforms are carefully phased to avoid disrupting live price control processes, investment programmes and wider regulatory reforms. Regulatory appeals form part of the framework within which companies prepare business plans, regulators make decisions and investors assess regulatory risk. Changing the appellate body, standard of review or available remedies during a price control process would change the rules and be procedurally unfair.

This is particularly important given the number of regulatory processes underway, which are being developed on the basis of existing appeal rights. In the water sector, preparations for a new regulatory framework and price review are taking place alongside the establishment of new water regulators for England and Wales – indeed, the consultation states that payment systems are out of scope of the changes because their regulator is being abolished, like Ofwat. Ofgem is implementing RIIO-3 and the Civil Aviation Authority is undertaking the H8 price control for Heathrow. These processes are also taking place alongside broader reforms to regulatory frameworks.

Introducing a new appeals regime during these processes would create avoidable uncertainty, particularly if the reforms change the intensity of review, evidential requirements or available remedies. We therefore recommend that the UK Government adopts the following transition principle:

Changes to the regulatory appeals framework should not apply to a price control or equivalent regulatory process that is already underway when the new legislation takes effect. The existing appeals framework should continue to apply until that process, including any resulting appeals, has concluded.

For the water sector, this recommendation would mean retaining the existing appeals framework, including price control redeterminations, for the 2029 price review (PR29). Reflecting the differing policy approaches of the UK and Welsh Governments, we also recommend that:

- in England, any new appeals regime should only take effect after PR29 has concluded and wider reforms to economic regulation have been implemented; and
- in Wales, decisions on whether and when to reform regulatory appeals should be taken by the Welsh Government, consistent with its wider decisions on the future of economic regulation (this would be consistent with the approach seemingly taken for the water

¹¹¹ ‘[Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement](#)’, pg.55, paragraph 155, Department for Business and Trade, (July 2026).

sectors in Scotland and Northern Ireland, which are being left unchanged in the consultation).

Any legislation implementing reforms to regulatory appeals should include clear transitional provisions so that stakeholders can identify with certainty which appeals framework applies to decisions already in development. For water, these should expressly preserve the existing redetermination framework for all PR29 matters, tied to the PR29 charging period rather than the commencement date so that any saving provisions protecting PR29 cannot be overtaken by the reform timetable. Commencement should also take place only once the relevant appellate body, procedural rules and specialist capability are in place.

We recommend that transitional protections are set out in the legislation itself. Express provisions to preserve the existing redetermination regime for PR29 would give companies and investors certainty that PR29 will be completed under the rules on which they have been prepared for.

We have developed potential drafting that could be used for the water sector in England and Wales. These provisions should:

- preserve both legs of the existing redetermination right: the power in section 12 of the Water Industry Act 1991, and the conditions of appointment that give effect to it,¹¹²
- apply to all PR29 matters, including for example interim determinations during the 2030-35 charging period (or whatever duration is set for price controls determined at PR29), and
- be tied to that charging period rather than the date any new legislation comes into force, and apply equally to any successor to Ofwat.¹¹³

Table 1: Illustrative legislative drafting

Section X of Clean Water Act

Interpretation

- “the Authority” means the Water Services Regulation Authority;
- “price control” and “periodic review” have the meanings given by the conditions of appointment of the relevant undertaker concerned (and “periodic review” includes any equivalent review, however described, under those conditions);
- “the PR29 period” means the period beginning with 1 April 2030 and ending with the day before the first day for which price controls determined pursuant to the next following periodic review takes effect, or any part of that period;

¹¹² Condition B paragraph 16 (with the machinery Condition B operates on) and Condition N paragraphs 11–12 (the CMA fee) to survive for relevant PR29 matters.

¹¹³ As an example: [the Civil Aviation Act 2012](#) interim period – in which Schedule 10 of the Civil Aviation Act, and the Civil Aviation Act 2012 (Commencement No. 1, Transitional, Transitory and Saving Provisions) Order 2013 (SI 2013/589) kept Airports Act 1986 functions alive so that legacy price control business could be concluded under the old rules before the new licensing regime took over.

- “relevant determination” means a determination made under the conditions of appointment of a relevant undertaker [whose area is wholly or mainly in England] in respect of charges for the PR29 period, including interim determinations;
- “the saving period” means the period beginning with the commencement day and end with [the end of PR29 / the day on which every reference to the Competition and Markets Authority in respect of a relevant determination has been determined].

Saving of determination regime

- (1) Despite the commencement of [the amendments made by section X], section 12 of the Water Industry Act 1991 continues to have effect during the saving period in relation to any relevant determination as if those amendments had not been made.
- (2) Nothing in this Act affects any right of a relevant undertaker to require a relevant determination to be referred to the Competition and Markets Authority.

Conditions of appointment

- (3) During the saving period, no power conferred by or under this Act may be exercised so as to modify, revoke or restrict any condition of appointment of a relevant undertaker so far as it provides for, or related to, the reference of a relevant determination of the Competition and Markets Authority.

Successor regulator

Where the functions of the Water Services Regulation Authority are transferred to another person, references to the Authority in the provisions saved by this Schedule are to be read, in relation to a relevant determination, as references to that person.

Adapted from the Civil Aviation Act 2012 (Commencement No. 1, Transitional, Transitory and Saving Provisions) Order 2013 and Schedule 10 of the Civil Aviation Act 2012).

Annex 1: Costs of regulatory appeals

This table provides identified costs of regulatory appeals from 2015 to 2026.¹¹⁴

Table 3: Identified costs of regulatory appeals

#	Case	Year	Total costs (nominal, £ million)
1	Water PR24 Price Redeterminations for five companies	2026	40.8
2	Castle Water Code Modification Appeal	2025	0.5
3	Utilita Energy Limited Financial Resilience Appeal	2023	0.5
4	Northern Powergrid (Northeast) Plc & Northern Powergrid (Yorkshire) Plc vs GEMA	2023	0.5
5	H7 Heathrow Airport Licence Modification Appeals	2023	1.2
6	SSE v Ofgem (SEE Code Modification Appeals)	2021	0.4
7	Energy Licence Modification Appeals (RIIO-2)	2021	4.3
8	NATS (En Route) Plc/ CAA Price Determination	2020	Redacted
9	Ofwat Price Determinations (Water Re-Determinations) for four companies	2021	30.8
10	Ping Europe Ltd v CMA CAT 6	2019	2.1
11	Viasat v Ofcom CAT 11	2019	1.0
12	SONI Limited v NIAUR, CMA	2018	0.9
13	EDF / SSE Code Mod appeal	2018	Redacted
14	British Telecommunications Plc v Office of Communications CAT 1	2018	2.7
15	Leased lines price control appeals: CityFibre and TalkTalk	2017	0.5
16	Firmus Energy licence modification appeal	2017	0.6
17	Walter Hugh Merricks CBE v Mastercard CAT 27	2017	2.0
18	BT and TalkTalk Superfast Broadband price control appeals	2016	0.7
19	Bristol Water plc price determination	2015	3.3
20	Energy price control appeal: British Gas Trading (CMA)	2015	0.9
21	Northern Powergrid (Northeast) Limited and Northern Powergrid (Yorkshire) plc v the Gas and Electricity Markets Authority (CMA)	2015	2.6
22	Albion Water Limited v Dŵr Cymru Cyfyngedig CAT 16	2013	2.5
23	Confidential - price control appeal	Unknown	1.5
24	T-Mobile (UK) Limited, British Telecommunications Plc, Hutchison 3G UK Limited, Cable & Wireless & Ors v Office of Communications v Vodafone Limited, Orange Personal Communications Services Limited CAT 8	2009	0.3
25	Hutchinson 3G UK Limited CAT 8	2006	1.0
Total			96.3

Source: Towerhouse LLP analysis

¹¹⁴ Some components of the parties' costs for cases 4-8,10 and 13 were redacted or not publicly disclosed.

Annex 2: Financial impact of regulatory appeals

This provides a summary of the financial impact on participating firms of appeal decisions and redeterminations by the Competition and Markets Authority.

Table 4: Financial impact of regulatory appeals to the Competition and Markets Authority

Item:	Price control decision	CMA Final Determination	Regulator	Impact on allowances over price control (nominal, £ million)	Notes
1.	Water: PR24	March 2026	Ofwat	£463m (over 5 years)	Redeterminations for five companies
2.	Energy: Financial resilience	January 2024	Ofgem	0	Licence modification (Capital Target): Dismissed on all grounds
3.	Heathrow: H7	October 2023	Civil Aviation Authority	£152m (over 5 years)	AK factor (£177m) cost of index linked debt (£25m)
4.	Energy: RIIO-2 (ET, GT, GD)	March 2021	Ofgem	£281m (over 5 years)	Outperformance wedge (£244m), ongoing efficiency (£33m), Business Plan Incentives stage 4 (NGN only)
5.	Water: PR19	March 2021	Ofwat	£516m (over 5 years)	Redeterminations for four companies
6.	Air Traffic Control: RP3	November 2019	Civil Aviation Authority	£20m (over 5 years)	Vanilla WACC increased to 3.05% from 2.68%
7.	Energy: ET	November 2017	Northern Ireland Authority for Utility Regulation	£5.4m (over 5 years)	Financeability methodology and risk
8.	Energy: GD17	June 2017	Northern Ireland Authority for Utility Regulation	£0.853m (over 5 years)	Changes to operational expenditure allowance
9.	Telecoms (TalkTalk)	April 2017	Ofcom	£5m (over 5 years)	Treatment of non-domestic rates in cost-based price control for Dark Fibre Access

					(offsetting change to leased line charge control)
10.	Telecoms (BT)	June 2016	Ofcom	n/a	Margin squeeze technicality, otherwise dismissed
11.	Water: PR14	October 2015	Ofwat	£19m (over 5 years)	Change to total expenditure allowances, WACC
12.	Energy: RIIO-GD1 (BGT)	September 2015	Ofgem	£105m (over 8 years)	Information Quality Incentives recalibrated to target upper quartile
13.	Energy: RIIO-GD1 (NPg)	September 2015	Ofgem	£31.5m (over 8 years)	Smart grid benefit cost reduction reversed
Total				£1,599m	

Table 5: Historic Competition and Markets Authority appeal decisions unlikely to have been upheld by the Competition Appeal Tribunal acting under a judicial review standard

Item:	Ground	CMA Final Determination	Regulator	Impact on allowances over price control (£m nominal)	Source
1.	Heathrow: H7 "Cost of index linked debt"	October 2023	CAA	£25m	CAA CAP3001, 11 Jul 2024, Table C.1
2.	Heathrow: H7 "AK factor"	October 2023	CAA	£177m	CAA CAP3001, 11 Jul 2024, Table C.3
3.	Energy: RIIO-2 "Ongoing efficiency"	March 2021	Ofgem	£33m	CMA RIIO2 (ELMA) FD, 28 Oct 2021, vol 2B, para 7.867; Ofgem RIIO2 FD, 1 Feb 2021: Cadent Annex Table 35, NGN Annex Table 16, SGN Annex Table 22, SPT Annex Table 6, WWU Annex Table 18 2018/19 totex adjusted for inflation to the CMA decision date, compounded down at 0.2% pa over 5 years of price control deducted from null case.
4.	Energy: RIIO-2 "Outperformance wedge"	March 2021	Ofgem	£244m	CMA RIIO2 (ELMA) FD, 28 Oct 2021, vol 2B, paras 6.183-6.186 (decision); vol 1, Tables 2-2, 2-3 and 2-4 (opening RAV); Order of the CMA, annexes B-D (gearing) Change in cost of equity of 0.25% adjusted for gearing multiplied by opening RAV multiplied by 5 (years)
5.	Energy: RIIO-GD1 (NPg) "Smart Grid Benefits"	September 2015	Ofgem	£31.5m	CMA: RIIO-ED1, 29 Sep 2015, Northern Powergrid v Ofgem FD, paras 4.161, 4.164
6.	Energy: RIIO-GD1 (BGT) "Information Quality Incentives"	September 2015	Ofgem	£105m	CMA: RIIO-ED1, 29 Sep 2015, British Gas v Ofgem FD, para 6.149
Total				£615m	

Annex 3: Consultation questions

No.	Question	Answer
Q44	Should Regulatory Appeals be transferred to the CAT? [Yes / No / Not sure] Please explain your views.	No – not under the current form of the Competition Appeal Tribunal. Please refer to Section 4 of our response.
Q45	Should the CAT have jurisdiction to determine price control matters in Telecoms Appeals? [Yes / No / Not sure] Please explain your views.	N/A
Q46	Would any amendments to the CAT Rules be necessary to ensure that Regulatory Appeals can be heard fairly and efficiently? [Yes / No / Not sure] Please explain your views.	Yes – please refer to Sections 4, 5 and 6 of our response.
Q47	Should Regulatory Appeals be determined in accordance with the standard of review set out in paragraph 204(a)? [Yes / No / Not sure] Please explain your views.	No – please refer to 3 of our response.
Q48	Should the notice of appeal set out the grounds of appeal and indicate whether the regulator’s decision was based on an error of fact, an error of law, or an error in the exercise of the regulator’s discretion, as set out in paragraph 204(b)? [Yes / No / Not sure] Please explain your views.	No – please refer to Section 3 of our response.
Q49	Should parties be allowed to submit new evidence on appeal? [Yes / No / Not sure] Please explain your views.	Yes – please refer to Section 5 of our response.
Q50	Should the cross-examination of witnesses be permitted, in line with the CAT Rules? [Yes / No / Not sure] Please explain your views.	Yes – please refer to Section 5 of our response.
Q51	In case the CAT quashes the decision, should the matter be remitted to the regulator, as proposed in paragraph	No – please refer to Section 3.6 of our response.

	204(d)? [Yes / No / Not sure] Please explain your views.	
Q52	Would the proposed appeal parameters set out in paragraph 204 create any barriers or challenges for the parties seeking to appeal a regulator's decision? [Yes / No / Not sure] Please explain your views.	Yes – please refer to Sections 3, 4 and 5 of our response.
Q53	Should the new appeal replacing Water Redeterminations be overseen by the CAT in accordance with the appeal parameters set out in paragraph 204? [Yes / No / Not sure] Please explain your views.	No – please refer to Sections 3, 4 and 5 of our response.
Q54	Should Water Regulatory References be converted into an appeal process, overseen by the CAT in accordance with the appeal parameters set out in paragraph 204? [Yes / No / Not sure] Please explain your views.	No – please refer to Sections 3, 4 and 5 of our response.
Q55	Should Energy Regulatory References be removed to simplify the order-making process and ensure greater consistency with similar powers existing for other licensable activities? [Yes / No / Not sure] Please explain your views.	N/A
Q56	Should eligibility criteria be harmonised across sectors? [Yes / No / Not sure] Please explain your views.	No – please refer to Section 6 of our response.
Q57	In case of harmonised eligibility criteria for Regulatory Appeals and Telecoms Appeals, should the right to appeal be granted to (i) licence holders and companies holding an appointment, and (ii) persons whose interests are materially affected by the regulator's decision and bodies or associations representing such persons, including	No – please refer to Section 6 of our response.

	consumer bodies? [Yes / No / Not sure] Please explain your views.	
Q58	Should parties be required to seek the permission of the CAT to bring an appeal? [Yes / No / Not sure] Please explain your views.	Yes.
Q59	Should third parties be permitted to intervene in an appeal, subject to obtaining permission from the CAT? [Yes / No / Not sure] Please explain your views.	No – please refer to Section 6 of our response.
Q60	What barriers to appeal exist for consumer groups or other groups (such as environmental groups) in regulated sectors? Please specify the sector you are referring to.	Please refer to Section 6 of our response.
Q61	In addition to existing CAT Rules on cost recovery, what cost arrangements or other aspects of the appeal process could help ensure fair participation by all eligible parties in Regulatory Appeals and Telecom Appeals?	Please refer to Section 6 of our response.
Q62	Should costs be capped for certain parties, such as consumer groups? [Yes / No / Not sure] Please explain your views.	No – please refer to Section 6 of our response.
Q63	Should specific cost arrangements exist in relation to the costs incurred by regulators in defending their decisions? [Yes / No / Not sure] Please explain your views.	No – please refer to Section 6 of our response.
Q64	We welcome any further views on how to improve the effectiveness of Regulatory Appeals.	Please refer to our full response and accompanying material.