

[Wishful regulation](#) [1]

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Regulators were originally created to bring quasi-competition to newly-privatized markets. But, more than this, the last government used them as wish fulfilment agencies and that still continues. We were all shocked when companies collapsed taking their pension funds with them, so the Pensions Regulator was created to ensure that employee pensions were protected. We want energy sustainability, so Ofgem was tasked with ensuring it. The idea seemed to be that you could appoint a regulator and, hey presto, the government's wishes would be fulfilled.

If the regulator thinks a pension fund is being inadequately funded, it may issue a 'Financial Support Direction' (FSD) and the firm is required to make up the difference. This month Nortel Networks and Lehman Brothers European Division are resisting FSDs totalling £2.25bn and have brought the case to court. In the five years before that, the regulator issued just one FSD to Sea Containers in 2007.

Quite apart from being too slow on the draw, the regulator may well lose because secured debts (e.g. bank loans secured against assets) take precedence over unsecured obligations such as pension funds. If parliament had intended pension fund precedence, it should have legislated to that effect. Then we would not have needed the Pensions Regulator at all and saved over £40M p.a. and its 337 staff.

Ofgem was also in the news this month expressing concern with the announced increase in energy prices coupled with the increase in the margins of the energy companies. The Chief Executive, Alastair Buchanan, told the Today programme that, as they now had the company accounts and were on top of the case it would only take another three months or so, into March 2011, to investigate and report. By March, these 2010 price increases will be history. They will not be wound back and, in the unlikely even Ofgem finds against the industry, consumers are very unlikely to be compensated.

Last year Ofgem had half a dozen investigations of which its 403 Ofgem staff managed to resolve two. The poor response to complaints resulted in the £200,000 fine being handed over to the Citizens Advice Bureau. In July, EDF Energy Networks were fined for failing to meet statutory timescales for connections. The £2M was not returned to the suffering consumers, but to the Treasury.

Ofgem has no targets for industry costs to consumers as the original regulators had nor measures of progress towards a competitive market. 'Sustainability' is now their priority and the justification for a 21% increase in staff and 25% increase in costs (£26.2M 2009/10). Its cost target was supposedly RPI -3%. The Chief Executive earns well over £300,000 and his four 'senior partners' in the executive group earn about £200,000. The better regulation team has been reduced from four to two. Sustainability is certainly desirable but it will not be achieved by a quango that is supposed to be holding prices down, adding to

industry costs by telling them how to run their businesses.

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