Less appealing prospects

Implications of changes to regulatory appeals

Client note July 2026

Economic Insight

1 New proposed regulatory appeals standards have material implications for regulated companies

On July 17th, Government published a consultation on revisions to the approach to competition law redress cases, competition enforcement actions and regulatory appeals. In relation to the latter, Government's stated aim is to make reforms that *"tackle the complexity and burden of regulation and reduce uncertainty across the regulatory system."*[1] It highlighted that there are currently material inconsistencies in the appeals regimes across regulated industries, as regards the appeal body; standard of appeal; and parties eligible to bring appeals. Government is concerned these inconsistencies render the current approach complex and inefficient, which undermines certainty and stakeholder confidence.

Under Government's proposals, responsibility for all regulatory appeals in the water, energy, air and postal industries (and price control matters in Telecoms Appeals that are currently referred to the CMA) will transfer from the CMA to the Competition Appeal Tribunal (CAT).[2] As they stand, the proposals have the following implications for regulated companies:

- **Ensure the quality and precision of your evidence and arguments are exacting.** The proposals include introducing a harmonised judicial review standard of appeal across regulated industries. This means companies will need to show that regulatory decisions were *"materially wrong"* on the grounds of illegality, irrationality, unreasonableness, and (procedural) unfairness. Success against these tests is hard to achieve, and so what you argue, how you argue it, and the evidence you rely on in doing so, needs to be of the highest quality.

- **Get your arguments and evidence in place from the outset.** When considering appeals, the CAT is entitled to permit new evidence, subject to its Rule 21(2). However, based on our experience of acting as experts on the National Lottery subsidy dispute at the CAT[3], we anticipate the Tribunal applying a high bar to allowing new evidence, once an appeal is lodged. Appellants will need to demonstrate that their new evidence highlights an issue that the decision-maker should have known about, and taken into consideration, at the time of its decision; but did not (in order to demonstrate irrationality). Companies therefore need to (i) frame and embed their best arguments and evidence prior to appeals, ideally as early on in a regulatory process as possible (e.g. within their business plans); and (ii) put down markers for why new evidence may be needed to demonstrate irrationality.

- **Line up experts who can withstand cross-examination.** The CAT has the ability to cross-examine witnesses on evidence, including in relation to expert reports it permits. This creates an opportunity for companies to highlight deficiencies in regulatory decisions. However, such situations are high-pressure and unpredictable. The implication is that, as business plans and regulatory submissions on appealable matters are developed, you must think carefully about who the authors are (internally and externally) to ensure you have options that include individuals capable of withstanding court-room questioning on technical matters.

[1] *'Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement.' HM Government (2026); para 147.*
[2] *The Rail and Payment Services industries are excluded from the scope of the consultation.*
[3] *'1730/12/13/25 New Lottery Company Ltd and Others v The Gambling Commission.'*

- **Take a pro-active approach to regulatory remedies.** The CAT will have the power to quash (in whole or in part) regulator decisions. Where it does so, the Tribunal will not overwrite the original decision, but will refer it back to the relevant regulator by direction. This means you need to think ahead and, following any CAT ruling, be ready to rapidly and constructively engage in the revisited regulatory decision-making process. This also means you need to take care with how you conduct yourself under appeal proceedings, so as to not antagonise your regulator.

2 Strategy for companies: engaging in the consultation and preparing for change

The overriding impact of the proposals will be that regulated companies in the UK have less recourse open to them to remedy, or deter, poor-quality regulatory decisions that are detrimental to stakeholders, including customers and investors. Strategically, this means companies should:

- consider how they can engage in the consultation process, to help constructively influence the proposed reforms; whilst simultaneously
- preparing themselves for a different future regarding appeals.

Constructive engagement in reform

Government's proposals are primarily framed around the hypothesis that the inconsistency of appeals processes has been sufficiently detrimental to stakeholder confidence that addressing this through harmonisation delivers material benefits, *irrespective of the nature of the new harmonised approach.* In truth, investor confidence has been damaged by inconsistency in regulatory decision-making *within each industry* over time. Unless that is addressed at source, the need for a strong regulatory appeals regime, with a reasonable prospect of companies being able to meaningfully challenge and overturn regulatory decisions detrimental to their stakeholders' interests, is essential.

Accordingly, companies should consider how they can encourage Government to reframe the reform proposals around the above, and should actively resist the high bars proposed for the standard of reviews, grounds of appeals and submission of evidence.

Preparing for the future

Even if companies succeed in influencing the above, the die is likely cast as regards the migration of responsibility from the CMA to the CAT. Thus, even if the 'bars' are lowered, companies will need to get ready for a more legalistic, more adversarial, and more pressurised context for bringing appeals.

This requires a mindset change in terms of how regulatory submissions, and corresponding evidence, are developed. It also means getting comfortable with the need to run in parallel constructive sectoral regulator engagement alongside contentious disputes (i.e. fighting your corner, without things becoming personal).

Concluding remarks

The consultation contains the telling remark: *"the final determinations document for… (PR94) issued by Ofwat… was 63 pages long, whereas in 2024… [it] was more than a thousand pages."* Companies may wish to reflect on whether this is, as Government suggests, evidence that regulatory appeals are now too demanding and complex for the CMA, or rather, evidence of erroneously detailed regulation that must be streamlined and open to challenge on the merits.