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# Cross-sector Infrastructure Interactions – conclusions

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Statement

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## About this document

This document sets out the conclusions of UKRN’s project on cross-sector infrastructure. It proposes a package of remedies to support an industry-led self-regulatory response to clients’ concerns.

This project forms one part of our work on infrastructure investment<sup>1</sup>. The other workstreams include:

- an Investor Guide<sup>2</sup> to support the investment community in its understanding of how the UK regulated utility sectors work;
- a summary report on enabling innovation<sup>3</sup> that focuses on current practices across the regulated sectors and the way that each regulator supports or promotes innovation.

Other related UKRN work includes:

- our report on network resilience and the role and duties of economic regulators in supporting cross-sector resilience<sup>4</sup>; and
- our project looking at the factors affecting affordability of utility services for households, considering how affordability issues are approached in different regulated sectors, outcomes for households and the role of regulators in addressing affordability.<sup>5</sup>

## About UKRN

UKRN is a network formed by the UK’s economic regulators:

- The Civil Aviation Authority (CAA)
- The Financial Conduct Authority (FCA)<sup>6</sup>
- Office of Communications (Ofcom)
- Office of Gas and Electricity Markets (Ofgem)
- Water Services Regulation Authority (Ofwat)
- Office of Rail Regulation (ORR)
- Northern Ireland Authority for Utility Regulation (Utility Regulator)
- The Payment Systems Regulator (PSR)

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<sup>1</sup> Further details of this project is available on the UKRN website: [http://www.ukrn.org.uk/?page\\_id=182](http://www.ukrn.org.uk/?page_id=182)

<sup>2</sup> The UKRN investor guide is available on the UKRN website here: <http://www.ukrn.org.uk/wp-content/uploads/2014/07/UKRN-Investor-Guide.pdf>

<sup>3</sup> The enabling innovation report is available on the UKRN website here: <http://www.ukrn.org.uk/wp-content/uploads/2014/07/Cross-sector-infrastructure-investment-enabling-innovation.pdf>

<sup>4</sup> Our phase one report on cross sector resilience is available here: <http://www.ukrn.org.uk/wp-content/uploads/2015/04/Cross-sector-resilience-phase-1-final.pdf>

<sup>5</sup> Our phase I report on understanding affordability issues is available here: <http://www.ukrn.org.uk/wp-content/uploads/2015/01/UKRN-Affordability-Report.pdf>

<sup>6</sup> Although it has competition and consumer protection functions, the FCA is not classed by HM Government as an economic regulator

Monitor, the sector regulator for health, participates in the network and its projects as appropriate. The Water Industry Commission for Scotland (WICS) and Legal Services Board (LSB) are contributing members which generally participate in projects as observers.

## **Contributors to this document**

This document has been produced by

- Ofgem;
- Ofcom,
- Ofwat, and
- ORR

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## I. Introduction

- 1.1. This document sets out UK Regulator's Network's (UKRN) final conclusions, commitments and recommendations to make infrastructure interactions quicker, easier and cheaper. Cross-sector interactions are a significant issue. We estimate that over £13 billion may be spent on interactions in the next five years.<sup>7</sup> It is an issue affecting multiple sectors, regulated and non-regulated, where significant benefits can best be realised if actions are co-ordinated across sectors. Because of this, economic regulators decided the issue was best considered jointly through the UKRN.
- 1.2. In June 2014 we held a forum with industry stakeholders where we introduced a range of issues affecting cross-sector infrastructure investment. One of these issues was whether costs incurred by developers of new infrastructure, when they interact with existing in-situ infrastructure, are too high.
- 1.3. Since the forum, UKRN has undertaken further evidence gathering to assess the strength of this concern, how it affects interactions and what could be done. This led to a remedies consultation in June 2015.
- 1.4. Those that wish to install new infrastructure or work in proximity to existing in-situ assets (i.e. 'clients') are obliged to agree terms with the incumbent network operator, to protect assets and ensure safe working. This places network operators, in particular those recognised as 'statutory undertakers', in a privileged bargaining or monopoly position. The perception of onerous terms or poor quality service to clients prompted UKRN's study. However, we have seen examples of good practice by network operators when dealing with clients, albeit these practices are not adopted by all networks.
- 1.5. Overall, we consider that regulated networks are best placed to deliver improved service to clients, holding both the expertise and relationship with clients, and should be supported in delivering a self-regulatory solution. The conclusions of this statement are aimed at facilitating this. UKRN will undertake a follow-up review, likely in January 2017, to assess the success of this approach and whether further actions should be taken, including directly by economic regulators or government.
- 1.6. We also consider that other infrastructure operators, in particular roads and highways, would benefit from considering our recommendations and adopting these recommendations where appropriate.

### **The problems with crossing or working near in-situ assets**

- 1.7. We characterised the challenges for clients that can occur when crossing in-situ infrastructure as:<sup>8</sup>
  - Poor service standards, with lack of clarity over points of contact, timescales or other performance standards;
  - Inaccurate information or poor co-ordination of works;
  - Onerous engineering design requirements and inconsistency between similar projects; and

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<sup>7</sup> See paragraphs 3.1 – 3.2 of UKRN's '[Cross-sector infrastructure: consultation on remedies](#)' 4 June 2015.

<sup>8</sup> Clients are defined as any person or business that needs a network operator's permission or co-operation when installing their own infrastructure or to undertaking work on land in which the network operator has installed assets. See chapter 4 of '[Cross-sector infrastructure: consultation on remedies](#)', 4 June 2015, UKRN.

- Poor transparency of fees or charges or onerous contract terms, including indemnity terms.

1.8. Collectively, we termed these ‘frictional costs’ of dealing with incumbent networks. The priority for action is to ensure clear points of contact and governance, to agree firm timescales and work within clear service standards. However, clients’ good or poor experience of interactions is mixed, and depends upon project, utility, and timing. We also found examples of good practice: bilateral agreements with landowners to improve interactions, industry codes of practice and examples from other issues where network operators have taken the initiative to improve working practices.

## Our consultation

1.9. In June we consulted on a package of remedies. Our main proposals related to the information and service standards offered to clients and public reporting on this, including: a statement of good practice principles; an annual public report by networks on their service to clients; and a commitment for UKRN to take-stock of outcomes in the 2016-17 business year. We also raised queries on the quality of, and access to, asset data and on issues affecting indemnity levels required by incumbent networks.

## Responses<sup>9</sup>

- 1.10. Overall, respondents, whether clients or incumbent networks, recognise the significant infrastructure challenge facing the UK and the potential savings from making the process quicker, easier and cheaper. The proposed principles are supported, with some suggested amendments to include safety and security. Our stated intention to review progress in the 2016/17 business year was also supported. Some respondents considered that direct regulatory intervention was required. This included, for example, setting specific minimum service standards, requiring networks to offer warranties for inaccurate information, mandating (poor) performance payments and requiring independent arbitration of disputes. Others considered that the proposals struck the right balance between too little intervention and too “heavy-handed” regulation. An overall theme of responses was the balance between service commitment, and resources, to meet clients’ needs versus existing statutory duties of network operators, such as providing new connections and minimising service interruptions for customers.
- 1.11. Annual reporting on a uniform basis is not universally supported. Some respondents are concerned with the costs, specifically additional data collection on top of existing regulatory reporting obligations. In addition, some considered that greater comparability of reports within sectors was necessary, which would need more detailed consultation to reach agreement. Other respondents queried whether existing legislative standards (e.g. from street works) may supersede or conflict with the proposed reporting. On balance, a more be-spoke report is preferred, which more closely reflects the principles and the individual circumstances of network operators.
- 1.12. On network asset data issues, the majority of respondents considered that incentives were already in place to improve data quality (such as safety duties) and data access, and this was best led at an industry-level. Some clients considered networks should take greater responsibility for the quality of data, offering a warranty, and in meeting costs of surveys. It was noted that a number of schemes provide online access to network data of one or more utilities (‘data portals’), but that these may not always provide complete coverage of all relevant utility services or roads within a specific area. Many

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<sup>9</sup> A more detailed summary of responses is attached to this statement and available on [UKRN’s website](#).

respondents recognised that provision of information to a central hub could, in theory, offer ‘one stop shop’ advantages. However, past efforts to establish a common data portal faced significant challenges, including responsibility for data accuracy, costs of adopting common terminology and IT standards, ensuring full inclusivity of relevant infrastructure operators and, in some cases, national security concerns.

- I.13. We queried the extent that the level or scope of indemnity cover required by incumbents from clients materially affected interactions, and what remedies may be available. Nearly all respondents that commented recognised that indemnity requirements can cause problems for clients, albeit that their purpose is, ultimately, to protect the supply of services to consumers. In summary, problems include i) poor information on risks or assets, which made commercial assessment of projects versus risks difficult; ii) the duration that indemnity clauses remain in force; iii) the scope of indemnities, in particular inclusion of consequential losses or damage caused by third parties to a clients’ assets that subsequently affects the incumbent’s network; and iv) cases where indemnity levels did not appear to reflect risk, with unlimited liabilities required of clients. Overall, this was considered to raise costs and risks for infrastructure development.

## 2. Recommendations

- 2.1. The following sets out the actions that we recommend utility and rail network operators should take to improve interactions with clients. For the avoidance of doubt, we consider that regulated electricity and gas distribution and transmission networks, rail network and water and sewerage network operators with a significant regional or national geographic footprint should act on these recommendations. We consider other sectors, notably road and highways, should consider adopting these recommendations to ensure the benefits of widespread co-ordination can be realised.

### 1. Good practice principles

- 2.2. Overall, respondents supported the draft good practice principles. Some specific proposals were made to ensure that the statutory duties of network operators were captured, including safety functions, and to ensure sufficient resourcing was put in place to support clients. It was suggested that the principles on which we consulted were too detailed and prescriptive. We agree with this. We have therefore revised the principles. However, certain elements of the draft principles relating to service levels and clarity of process were considered a key part of the issue to be addressed. We therefore recommend an access statement is published, containing details of how clients should interact with an incumbent network. This is described at paragraph 2.4 below.
- 2.3. We expect the principles to guide network operators in how they work with clients and to reflect their success at meeting these principles, and planned improvements to their process, in a public annual interactions report. The principles will be published on UKRN’s website and those of relevant regulators.

#### **Good practice principles for managing infrastructure interactions**

##### **Principle 1: The role of infrastructure network operators**

Infrastructure network operators recognise: the stewardship role they play in developing, owning and operating our national infrastructure; and that effective planning and delivery of new infrastructure, across all sectors, benefits everyone.

##### **Principle 2: Efficiency, economy and safety**

Without prejudicing the needs of customers or funders, or its statutory duties including safety, network operators of in situ assets should act with efficiency and economy when interacting with clients.

##### **Principle 3: Transparent processes and practice**

Network operators should establish and follow a process to manage interactions that is transparent, easy to follow, appropriately resourced and commits to explicit service standards appropriate to the clients and projects concerned, supported by provision of accurate information about the operators’ network, safety or process as necessary.

##### **Principle 4: Clear, transparent and appropriate pricing**

Any fees or charges to clients should be clearly explained, reflect reasonable and appropriate cost and risk, without exploiting unfair commercial advantage, and where reasonable facilitate efficient planning and delivery of infrastructure projects.

##### **Principle 5: Continuous learning and best practice**



The lessons and experiences of best practice in managing interactions within the firm, based on measurable performance where possible, and outside are pro-actively gathered and applied, with a commitment to training and support of staff managing interactions.

## 2. Access statements

- 2.4. Network operators should produce an ‘access statement’, which provides the practical information necessary for clients when crossing assets and which reflects the principles. Attached to this statement is an advice note on the recommended content and promotion, which reflects the points made in our consultation and by respondents of the information they need. **We recommend that this access statement is published by no later than 31 December 2015.**
- 2.5. The access statement should cover the most common instances of interaction requests. It is not expected to be exhaustive given the wide range of projects facing clients and networks, or to supersede bespoke arrangements with clients. Its purpose is to: facilitate engagement by clients; help networks to address the core concerns with interactions (i.e. ‘frictional costs’); and set out the approach and service levels against which networks operators can reflect on in their annual reporting.
- 2.6. This proposal was not explicitly included in the consultation paper. Instead, it reflects comments that i) the principles were too prescriptive but ii) the focus on information to clients and certainty of service level was a key and welcome proposal. We do not propose that any particular minimum or common service standards are adopted through the access statement, but instead encourage greater visibility of the process, points of contact and corresponding timescales be communicated clearly to those crossing networks. Where relevant this will also prompt network operators, where they have not already done so, to consider questions such as who has senior level accountability for interactions, what appropriate governance is required and the consistency of their approach to costing of works. Timescales of the process and works are clearly important to clients, so where practicable timescales should be provided by the network.

## 3. Annual reporting

- 2.7. Network Operators should publish an annual report. The purpose of the report is to: take stock of progress and performance at meeting the principles and service offered to clients (mainly as set out in the access statement); create an opportunity to engage with clients; and identify forward looking changes or planned actions to improve interactions. The report indicates a commitment to addressing concerns with interactions, provides public accountability and is a route to engage with clients and stakeholders more widely.
- 2.8. We recommend that the report is produced by all network operators, but with a focus on electricity, gas, rail and water sectors. However, the report should be proportionate. Where a network operator has very few interactions, or these interactions are of a routine nature and insignificant cost to clients, a report may be either very brief or unnecessary (although we encourage network operators to explain this publicly so that stakeholders are aware of this position and its rationale). Network operators are best placed to judge the scope of a report and how it can best support its commitment to address concerns with infrastructure investment. To support network operators, **we plan to publish a short guidance note** that reflects the information that clients considered most useful to be included in an annual report. This is to be published before the end of the year.

- 2.9. The annual report is not a regulatory requirement: any other obligations to provide data to regulators, for example from price controls, are not affected by these proposals. However, regulatory information can certainly be used to support the report if helpful to clients (for example, contrasting with performance at providing new connections). More generally, we would expect the reports to draw on network operators' management data collected in the normal course of business, to assess the success of meeting the standards in the access statement. Network operators, on a sector or cross-sector basis, are free to develop some common reporting practices in advance of publication, but input from clients is encouraged to ensure their needs are explicitly considered.

## Other issues

- 2.10. There are two further issues on which we sought views: the quality and access to network asset data; the indemnity levels required by incumbents.
- 2.11. **Quality/ access of network data.** Overall, respondents considered that existing, industry-led, measures to improve quality and access to network data was sufficient. Some clients disagreed, suggesting that certain BIS standards should be mandated, along with a 'tipping' of costs for data provisions and liability for poor data quality from clients to networks. Overall, we consider that professional technical bodies are best placed to identify and promote technical standards. We do not consider that UKRN should propose or support a single solution for data access at this time, given the range of public and commercial solutions already in place or under development and varied technical requirements across sectors. Neither do we consider that, ultimately, consumers of networks should bear all the costs of third party data requests. However, in response to concerns with omissions of some records from online data portals, **we recommend** that existing data portals include an unambiguous statement for users that explains the geographic coverage of the data provided and the utility services or assets included in their data.
- 2.12. **Risk and indemnity.** This is a complex area, and the information provided in consultation responses was not sufficient to support extensive proposals, especially in light of the complexity of balancing the interests of consumers, networks and clients. Concerns with particular firms or sectors, expressed by respondents, will be passed to relevant sector regulators. We will consider whether further work on this issue is appropriate within UKRN. **We recommend** that all regulated networks review the clarity of information in their indemnity agreements to ensure both the risks and relevant assets to be indemnified are described clearly, such that clients can appraise the commercial impact of indemnity terms more easily.

## Why is a self-regulatory approach sufficient?

- 2.13. The package of remedies set out here are, in essence, voluntary. They do not form part of the regulatory requirements of any sector regulator involved in this project, which would be a matter for that regulator to consider directly with its relevant stakeholders and consistent with its statutory duties. There is, therefore, a risk that some network operators may choose not to respond to these recommendations or address their clients' needs.
- 2.14. However, as noted, we came across examples of good practice by individual firms and sectors of self- or industry led regulation. For example, the water industry has adopted a voluntary code of service standards provided to property developers, including non-statutory target timescales for provision of quotations or responding to pre-development enquiries, with performance reported publicly. Further, network operators, as statutory bodies, must balance a range of duties and obligations, not least to the

consumers that rely on the essential services they deliver. This means that network operators are likely best placed to judge how different stakeholders' needs are met, whilst also having the expertise and capability to individually or collectively take practical steps to raise customer service levels to clients.

- 2.15. The success of utility and rail network operators in delivering a self-regulatory solution will form part of UKRN's subsequent follow-up and will influence any further actions, remedies or legislative action it may recommend to economic regulators or government.

## Follow-up actions

- 2.16. Following this conclusions statement, we will:

- Prepare a short guidance note to assist networks in planning for and publishing an annual report. We envisage the first reports to be published around **December 2016**.
- Publish the good practice principles on UKRN's, and relevant regulators', websites.
- Raise awareness of our recommendations with relevant roads and highways bodies, to encourage adoption beyond economically regulated utilities.

- 2.17. UKRN will return to this issue, likely in January 2017, once industry has had an opportunity to consider and develop its practices when dealing with clients. If there are any immediate questions or comments on these recommendations, please contact Stephen Beel ([Stephen.Beel@ofgem.gov.uk](mailto:Stephen.Beel@ofgem.gov.uk)) or John Holmes ([John.Holmes@orr.gsi.gov.uk](mailto:John.Holmes@orr.gsi.gov.uk)).