Sustainability First – Fair for the Future Project

Developing a 'Sustainable Licence to Operate': Fairness: Expectations, Roles, and Responsibilities

Talk into Action: Embedding change on this topic in energy and water companies

Background

1. Sustainability First's major Fair for the Future Project is helping the utility sectors to better address the politics of fairness and the environment. The Project has two workstreams: developing a 'Sustainable Licence to Operate' (we produced a strawman in October 2018 to stimulate and provide a framework for discussions) and mapping political and regulatory risk and uncertainty in terms of fairness and the environment. Our Fair for the Future Mid-Project Report, *Delivering on fairness and the environment: An agenda for responsible business in UK regulated utilities*, was published in January 2020.

2. This note is part of our Sustainable Licence to Operate workstream, which we define as 'A company's ongoing endorsement to operate within society and the energy/water system to deliver long-term public interest outcomes'.

3. We have proposed four 'Pillars' that make up a Sustainable Licence to Operate and have tested these through a series of stakeholder workshops.[1] Following each workshop, we hold bilateral discussions with companies to find out what they are doing to turn 'Talk into Action' on that Sustainable Licence to Operate topic and embed their approach in the business. Our aim is to identify and share evolving good practice, building an evidence base for change in the public interest. Being able to demonstrate how behaviours are changing 'on the ground' is essential if current public discourse around company purpose is to be meaningful.

4. This note is a summary of emerging themes and some specific examples resulting from this process for Pillar 3: 'Fairness: Expectations, Roles, and Responsibilities. It follows a workshop on 25 June 2019 attended by 41 people and seven bilateral

[1] The four 'Pillars' in Sustainability First's proposed 'Sustainable Licence to Operate' are: Pillar 1, 'Public purpose, philosophy, and public service values'; Pillar 2, 'Making best use of different types of capital: Competition and collaboration'; Pillar 3, 'Fairness: Expectations, roles and responsibilities'; and Pillar 4, 'Strategy and narratives that ring true for stakeholders'. For each pillar we have identified case studies of good practice from other sectors and/or from energy and water companies overseas. We have already hosted successful workshops on all of the pillars and will now iterate and 'wargame' our emerging thinking.

Chatham House interviews with energy and water companies[2] on this topic in late-2019 (see Annex 1 for list of questions discussed). We refer to companies by name when they have given specific permission for us to do so. The note also draws on our major deep dive case study from the Peabody Group on the linkages between expectations of and action on fairness in social housing; this case study is available to read in full on the Sustainability First website.

5. Our talk into action questions **aim at building a better consensus on the components and processes to be considered by all parties in assessing fairness**. In particular, we have sought to tease out some of the **boundary or perimeter issues** in terms of fairness and vulnerability: areas where companies have had to consider difficult trade-offs in terms of who benefits and who pays, or indeed consider whose responsibility it is to undertake action.

Summary

6. Fairness is key to establishing and maintaining a Sustainable Licence to Operate in utilities, but there has been much discussion about **what 'fairness' actually means** in the energy and water context, and what roles and responsibilities various parties (governments, regulators, companies, citizens, customers and consumer groups) should have in terms of securing the delivery of 'fair' outcomes and developing a shared view on what is 'fair'.

7. We have framed fairness using four key strands**: additional needs/potential vulnerabilities; inequality; insecurity; and the environment/low carbon transition**. In addition to this, our research tested some possible principles for fairness in the energy and water sectors; these are featured in full in Annex 1.

8. In brief, the emerging themes identified in our research on this topic include that while nearly all companies are clearly grappling with fairness issues and seeking to 'do the right thing', they are finding that the **lack of a clear framework and policy statements** can cause difficulties for those involved. This is particularly true in the energy sector where Ofgem does not currently have a Strategic Policy Statement.

9. Stronger concerns were raised by companies around how to deal with **social fairness and vulnerability** – as opposed to say environmental fairness. A lack of clearly defined social **metrics,** beyond basic license requirements, is an issue here. This is particularly the case for **intergenerational fairness**, where there are a number of difficult to judge **boundary and perimeter issues.**

10. Furthermore, the majority of energy and water companies which we spoke to identified a real **lack of clarity on where responsibility lies** – or indeed ought to lie – for tackling **future focused questions around fairness**. Companies are already

[2] Please note that when we carried out the research for this note, our sponsor group included energy and water companies only. BT, and United Utilities, have now joined the sponsor group. Our research in 2020 will therefore include the communications sector in addition to the energy and water sectors.

experienced in making day to day decisions which require judgements around sharing risk and reward in a fair way. However, there was a view amongst many in the energy context that to the extent cross-subsidies are unwound, and the challenges of delivering net zero and adapting to climate change become more acute and require more joined up responses at pace and scale, roles and responsibilities regarding fairness are becoming more complex.

11. We also heard from companies how they have sought to resolve complex issues concerning customers in vulnerable circumstances, particularly for example around fuel poverty and poverty in general, but that there is a perceived lack of legitimacy for company and sector initiatives in this area. There was a strong view that **government social policy** must be the arena in which these fundamental challenges are in the end solved. These policy and regulatory barriers are in addition to other day-to-day resource challenges faced by the companies.

Engagement on fairness: Who should engage on what to maximise legitimacy and address future challenges?

Source: Sustainability First

12. In our interviews, we established that as well as **clarity on roles and responsibilities**, **effective engagement between and among different stakeholders** is also key to the development of a 'fair' position that will gain widespread support. The above diagram illustrates where our research has indicated that engagement in the utility sectors by companies, regulators and government is needed to maximise legitimacy – and the shift in focus necessary to address future challenges in a 'fair' way.

13. The complexity of this issue and indeed the current lack of clarity on roles and responsibilities clearly makes the task for companies and regulators difficult in this space. Sustainability First therefore stresses the need for consensus to be built among government, policymakers, regulators, utility companies, and customers on roles and responsibilities as a foundation for moving forward. Our 'How-To Guide' for embedding a Sustainable Licence to Operate in UK utilities and subsequent

report on the policy and regulatory implications of this, both due mid- to late-2020, will pick up these issues in greater detail.

High-level emerging themes

Defining 'fairness' – and differentiation between companies and sectors

14. One aim of Sustainability First's Pillar 4 research is to determine how we can **achieve a clearer definition of what fairness means in energy and water**. However, the companies we spoke to – not unexpectedly – held a wide range of views on what constitutes fairness in this context.

15. One organisation's representative highlighted different potential definitions of fairness which may be contradictory: **procedural fairness** i.e. ensuring an organisation's processes are fair and seen to be fair; **achieving equality**, i.e. treating everybody the same no matter their circumstances; and understanding the **additional needs** faced by people in vulnerable situations.

16. Achieving **procedural fairness** may in some ways be a relatively straightforward goal. In energy retail, for example, it is regulated by Ofgem's Electricity Supply Standard Licence Condition 0 on treating domestic customers fairly. This states that companies must '*behave and carry out any actions in a [fair], honest, transparent, appropriate and professional manner*.'[3] Ensuring fair processes at scale may of course be more challenging. The citizens assemblies and juries that have been set up on net zero have the potential to lead the way here. However, these must serve as genuinely open and transparent fora that empower those taking part in the assemblies and give legitimacy to citizens' democratic decisions, as set out in our recent blog on the issue.[4]

17. **Distributional fairness, and fair outcomes,** are a more complex area. Our research confirmed that there are three broad ways of approaching this:

   - **Equity** (where you pay what you use/contribute). For some, fairness is tied up with **cost-reflectivity**, with the fairest system being one where every customer pays for the cost and value of the service they receive and consume;[5]

[3] https://epr.ofgem.gov.uk//Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf?utm_source=ofgem&utm_medium=&utm_term=&utm_content=licencecondition&utm_campaign=epr

[4] The French example may act as a useful case study here, where '[Emmanuel] Macron has vowed [the climate citizens' assembly's] policies will…be put to parliament "unfiltered", transformed into executive decrees or even used as the basis for a referendum.' See https://www.theguardian.com/world/2020/jan/10/citizens-panels-ready-help-macron-french-climate-policies.

[5] But note that because energy and water are 'basic goods', this form of fairness will typically be distributionally regressive: i.e. poorer consumers will have to pay a greater percentage of their disposable income on these products than better-off customers. (Nb. This does not apply where there are no water meters.)

- **Equality** (everyone pays the same). Here, a company may choose not to do anything that results in one community / group of consumers being worse off as a result of another's actions; and
- **Vulnerability** (taking account of ability to pay, additional needs and minimum standards of provision). For some, **willingness to help those who cannot help themselves** due to vulnerability or disadvantage, be that technological or educational, or through a lack of adequate support networks, is seen as important.

18. The approach taken to distributional fairness can have implications for **competition, consumer choice** and **investment decisions** / decisions that need to balance long term as well as short term goals.

19. Companies' answers to these questions depended on the **sector** in which they operate, their **function**, and the relative **competitiveness** of their respective markets. The energy retail market, for example, is an extremely competitive and dynamic space with significant levels of cross subsidy and distortion already built into the market; in this space, navigating complex fairness issues as cross-subsidies are unwound and arriving at fair outcomes is perhaps perceived to be more difficult than in the more stable natural monopoly context.

Lack of a clear 'fairness framework' and other 'blockers'

20. Regardless of sector, however, the energy and water companies we spoke to are facing **common fairness challenges**, and each sector and organisation is clearly grappling with the topic and seeking to 'do the right thing'. But companies stated that they are hindered in practice by **the lack of a clear framework and policy statements** on the issue. Our discussions highlighted the general theme, particularly reported from monopoly companies, that there has increasingly been a drift towards companies funding matters that historically had been funded through the public purse. Flood and resilience funding in the water sector is one such example.

21. Further 'blockers' to action reported by companies in both sectors included the level of **market distortion** – as stated a particular issue in the energy retail sector. Here the fact that the **costs of social and environmental obligations** fall largely on electricity rather than gas is an issue. **Regulatory barriers** which can lead to **siloed approaches** from companies rather than partnerships and greater collaborative working was also raised as another problem.

Getting clarity on roles and responsibilities

22. One issue particularly highlighted in our bilateral discussions was **inter-generational fairness and how best to balance the interests of different consumers**. Is it right, for example, to invest early to mitigate long-term impacts – and who should make the call on this? If customers are happy to see early investment for future benefit, demonstrated clearly through customer research, should regulators flex their guidance and accept it? And if customers do not wish to see such investment, is

there a case for companies going ahead anyway in evidenced cases of need? Given the limited number of pathways to net zero and the fact that if these are not kept open the alternatives will be significantly more costly, this is a significant policy issue in the energy space that needs to be addressed, certainly within the next 5 to 10 years and arguably much sooner.

23. **Fuel poverty** is also an area in which companies are trying to reach fair outcomes, but as with achieving intergenerational fairness, there appears to be a real **lack of clarity on where responsibility for policy and actions lie**. The issue of general poverty and the socialisation of costs came up in a number of discussions, and, not surprisingly, we heard from a number of companies about the challenges of dealing with people in vulnerable situations and the issues that arise in more competitive markets where the savvier customers are targeted by suppliers to switch. It was noted that this can lead to cumulative benefits – and cumulative disadvantage – for certain consumer segments.

The need for policy leadership

24. Concerns were also raised about a **lack of joined-up policy guidance and thinking** to drive fairness outcomes, including larger infrastructure and climate priorities such as the 2050 net zero goal. There was a sense that companies can only do so much in this space on their own, and that their markets must be supported by government to make these outcomes achievable. One organisation provided a particularly illuminating example, noting that by 2025, every Uber will be electric, but suppliers currently do not by and large install charge points by social housing developments, where a number of Uber drivers live – nor is this always possible, for example for tower blocks. The market is clearly not taking care of these issues itself; rather, concerted leadership is needed in the policy space to promote greater action.

'Depoliticising' fairness?

25. Finally, there was widespread consensus that **there needs to be a less 'politicised' forum for discussion of fairness** if companies, regulators, government, and wider stakeholders are to make progress in delivering fair outcomes generally and for customers in vulnerable situations in particular. Sustainability First's proposed **principles** for fairness in energy and water, detailed later in this paper, chart a possible way forward here.

Examples of good practice from energy and water companies

Stakeholder engagement – what do customers deem to be fair?

26. Based on our bilateral discussions with energy and water companies, by far the most common method employed by organisations in both sectors to determine what is fair is **rigorous, iterative and embedded customer and stakeholder engagement** – often in innovative ways that go beyond their regulatory remit. Below are a number of good practice examples from companies in both sectors.

27. Anglian Water has used stakeholder engagement tools as a means of unlocking the above-mentioned persistent problem of achieving intergenerational fairness, putting to its customers the key question of how much the organisation and its activities should be funded by its **current customers** and how much cost ought to be recovered from the **next or future generations** – noting that the answer to this question will either way have a **material impact on investment and therefore bills**. In contrast to standard willingness to pay research, the company explicitly used fairness as a framing mechanism in its customer consultations and invited more qualitative responses in this area. Subsequently, Anglian found that its customers clearly supported the principle of fair use and were **willing to pay their share in the present, rather than deferring vital investments to the future**. Similar results were found by the company when it asked customers whether it ought to invest to mitigate future **climate impacts** in line with the National Infrastructure Commission's (NIC's) recommendations in its *Preparing for a drier future*[6] report. Putting this question to consumers alongside the potential **impact on bills**, customers indicated a **strong willingness for Anglian to invest** in this way.

28. The water sector as a whole is looking to move towards more sophisticated models of measuring delivery for customers, for example through Ofwat's PR19 Customer Measure of Experience (C-MeX) pilot. As part of its work in this area, South East Water decided to use **customer segmentation** methods rather than sampling its customers on a periodic basis. Such **segmentation is based on customer values** – taking into account for example which customers are likely to be more interested in the organisation's climate impacts and which are most likely to be interested only in their family's bill – and is designed to prevent the possibility that a minority of customers' experiences are 'lost in the averages'. While achieving customer satisfaction and achieving fairness for all customers are clearly not the same things, South East Water does also segment customers based on potential vulnerability. It specifically **monitors its delivery** for this group of customers and **adapts its offering accordingly**, for example by providing human rather than electronic support interfaces for certain customers even when this is of higher cost to the company – thereby not simply providing an 'average' level of service to the so-called 'average' customer.

29. Nevertheless, there is always the **possibility that customer and stakeholder engagement can yield varying, sometimes contradictory results**. How can companies navigate these trickier 'grey areas' where the best course of action is not immediately clear based on their customer research? Cadent told us that of the 40 commitments put forward in its RIIO-2 draft business plan, seven of these could be said to contain 'conflicts', for example between customer appetite and the organisation's capacity to deliver. Broadly, these commitments could be described either as those additional services the company provides to customers in vulnerable situations or proposed actions by the company to support the drive to net zero carbon. For example, a large survey of the company's customer base showed a high

[6] https://www.nic.org.uk/wp-content/uploads/NIC-Preparing-for-a-Drier-Future-26-April-2018.pdf

level of support for the provision of greater services to prevent fuel poverty but a relatively low willingness to pay. In response to this dilemma, Cadent employed **data triangulation techniques** to analyse qualitative, bottom-up customer feedback, including building in a layer of external assurance, **and engaged with external expert stakeholders** such as Citizens Advice and National Energy Action – with the result that it proposes to go further on actions to alleviate fuel poverty among customers.

Collaboration and partnering

30. This type of **collaborative working** is another means highlighted by companies to achieve fairness for all stakeholders – and calls to mind Sustainability First's Sustainable Licence to Operate Pillar 2 case study, the **Thriving Communities Partnership** in Australia, an example of innovative collaborative working to tackle vulnerability in the round. Western Power Distribution (WPD), for example, outlined how it works with predominantly **smaller partner organisations** to deliver for customers in vulnerable circumstances, finding that working with place-based organisations, despite constraints on their capacity, is a more valuable exercise than always trying to scale up operations. Taking a more **local place based** approach is one way of unlocking these issues.

31. UK Power Networks (UKPN) has adopted a similar approach whereby it partners with **charitable organisations** which can through their extensive networks identify people struggling with fuel poverty. UKPN then funds these charitable organisations to provide expert guidance to those affected, including **holistic advice on issues from energy efficiency and switching to water debt**. This process of collaborating with partners has in turn helped to raise the profile of UKPN's work in relation to the Priority Services Register (PSR). Through UKPN's targeted fuel poverty programme, 520,000 customers have been helped over the last 12 months, saving these customers around £8.7 million.

Towards greater clarity and accountability in terms of roles and responsibilities: blockers, enablers, and possible principles for fairness

Blockers

Distorted markets

32. For some companies, the **lack of cost-reflectivity** in their sectors is perceived to be a major barrier to achieving fair outcomes for customers. One electricity supply company for example noted that according to current regulation all customers pay the same usage charge regardless of whether they are high cost-to-serve or low cost-to-serve. The company says that it highlights distortions in the network charging framework to BEIS and Ofgem and asks that they recognise and legislate for these when looking at the future charging framework and architecture.

33. Similar sentiments were expressed to us by an energy retail company director, who argued that the level of **cross-subsidies** built into the market made it **difficult to**

navigate processes and achieve fair outcomes for customers. Socialisation of costs in the system causes market distortion and allows for new entrants with more online-oriented offerings to target well-off customers, leaving incumbents to support more vulnerable users. And while it might be right in theory that responsibility for citizens in poverty rests with the government, in practice, energy companies are at the frontline when it comes to fairness due to their direct proximity to customers and their role as providers of essential services.

34. This issue may exacerbate with the move to net zero if significant material decarbonisation costs continue to be met through relatively regressive bills, which to consumers may appear un-transparent, as opposed to more progressive and transparent taxation.

35. This was a theme also discussed by the water companies, one of which noted that under the regulatory regime in water, charging areas are separated discretely and averaged across customers in that area. Fairness therefore depends on the **granularity of charging areas**. Whereas some companies have a number of charging areas in their locality and therefore these companies' customers pay a price closer to their own cost, others have only one charging area and so must navigate **larger cross-subsidies**.

Regulatory barriers

36. Companies further reported that **regulation** could act as a barrier to going as far as they wished on fairness and vulnerability. One energy company felt that the role of the regulator had become somewhat '**politicised**' and that this prevented stakeholders from discussing how to achieve fair outcomes openly and transparently. Another energy distribution company representative agreed, but noted that the regulator is to some extent 'trapped between a rock and a hard place'; fairness issues, they felt, could only be tackled fully when key people from government, regulation, companies, and wider stakeholders **come together in one environment and with a common purpose**.

37. **Stakeholder engagement** – clearly key for companies in deciding how to most fairly treat their customers – is one example of where regulation has been perceived perhaps to block more effective action on fairness matters. In water, for example, one company observed that Ofwat's own customer consultation activity, though improved, is still somewhat lacking. Furthermore, the regulator has been perceived not to have fully taken into account the findings of company stakeholder engagement during the PR19 process, risking the **customer voice becoming lost in decision-making** and business plans failing to be as customer- and citizen-centric as they perhaps might.

Siloed approaches

38. Finally, and related to the above points on partnering and collaborative working, concern was expressed by companies that both the **energy and water sectors too**

often favour siloed approaches to fairness and vulnerability. While there are clearly good practice examples of organisations working closely and effectively together with partner organisations and charities, there is much less being done on an inter- or indeed intra-sector basis. Again, this was perceived partly as a result of **prescriptive regulatory regimes** or **competition law** (for example not being able to share data with other competitive companies). In water, one company observed a lack of clarity on the respective roles of Ofwat and the Environment Agency, especially when it comes to matters of environmental or inter-generational fairness.

Enablers

Regulatory 'push'

39. Nonetheless, companies also indicated a number of possible enablers for clarifying roles and responsibilities and delivering fairness in the energy and water sectors – most notably the **potential for regulators to do more to encourage companies** to act.

40. A number of organisations stressed the fundamental need to achieve an appropriate balance of **assessing past performance, current delivery, and future planning**. In energy retail, one company suggested that Ofgem adopts a **universal service solution**: a mechanism whereby suppliers which take on customers in vulnerable situations are rewarded. While the regulator might cite current duties as preventing this kind of solution, this company representative felt that it was practicable under EU regulations, which allow for regulatory flexibility in decision-making and in particular confer formal powers for regulators to act in the interests of vulnerable customers.

41. For the water sector, one company suggested that Ofwat revives its annual **company monitoring framework** assessment[7] on organisations' data, processes, and governance, which is set not to be published in 2020, but which with sensible evolution could have been one successful element of differential regulation. Such a model could prevent the reputation of the sector being drawn to the lowest common denominator – that is, the lowest-performing company.

42. Another water company meanwhile suggested that the regulator promotes a **principles-based approach to regulation**, including around fairness, with the flexibility to be able to revisit decisions in the event of future material challenges faced by the sector. Water companies in some respects were perceived currently to be filling the role of the Environment Agency, which had gradually been seen to have stepped back from its former role. But with clearer roles and responsibilities for companies, regulators, and other stakeholders alike, there is the potential both to alleviate customer vulnerability and meet the future needs of the system.

[7] https://www.ofwat.gov.uk/wp-content/uploads/2019/01/Company-monitoring-framework-2018-report.pdf

Meaningful action by policymakers and government

43. This need for greater clarity on roles and responsibilities has been put into sharp focus following the UK government's announcement of the **2050 net zero target**. Strong and meaningful government action on climate – as in the case of the 2050 target – is clearly crucial for delivering environmental fairness, but it also poses questions of how to manage a **just and fair transition**.

44. Several companies felt that more needed to be done by **policymakers and government** to enable fairness moving towards 2050, with clear plans and areas of accountability. In the absence of clear plans, one distribution network operator (DNO) for example posed the question of whether it is responsible or legitimate for a DNO to model any scenario that does not meet the 2050 target. It would appear to be incumbent on businesses to meet this target, but **blurred roles and responsibilities** can get in the way of doing this; in the context of the transition, for example, what will be the respective roles and responsibilities of network companies and suppliers, or what will be the role of DNOs role vis-à-vis the transport sector and vehicle electrification?

45. Government, regulators, companies, and wider stakeholders must come together to tackle these questions and institute a **long-term, thought-out strategy**. Companies we spoke to felt that this could be a significant enabler to transitioning in a way that is as fair as possible for customers and citizens. In particular, companies pointed to the work of the **NIC**, especially its 2019 **regulation study**, as an enabler in ensuring clearer strategic direction from policy makers and fairness in long-term policy decisions.[8]

Possible principles for fairness

Procedural fairness

46. To try to chart a course through what is clearly a very difficult area for energy and water sectors, Sustainability First suggested some possible **principles for fairness**. The first of these concerns **procedural fairness** and the **process by which companies seek to reach fair decisions for customers and citizens**.

47. Noting three key questions for procedural fairness – *Who is the decision maker? Is it clear what the decision-making process is? Are decisions being made in a consistent way?* – we suggested the following principle:

The greater the a) distributional impacts and b) degree of ethical or political judgement, the greater the importance in the decision-making process of

[8] https://www.nic.org.uk/wp-content/uploads/NIC-Strategic-Investment-Public-Confidence-October-2019.pdf

accountability, transparency and consistency – and the decision maker having a democratic mandate.

48. Stakeholders responded to this proposed principle positively, noting the need especially for **transparency** and, crucially, a **democratic mandate** in decision-making. This goes back to the need for clearer roles and responsibilities, and the companies' sense that decisions around delivering for customers in vulnerable situations are increasingly having to be taken by the companies themselves rather than by government and policymakers.

49. However, companies also felt that the reality is more complex than can be captured in one principle, particularly, for example, where there are several possible 'winners' or 'losers' resulting from a proposed policy. That said, one company felt that the principle itself could be simplified as follows:

There should be a clear decision-making process, including clear delegations of authority, and that decision-making should consider societal impacts, along with traditional factors such as risk, cost and ROI.

<u>Distributional fairness</u>

50. Following procedural fairness, we turned to **distributional** fairness, or on how to achieve the **fair sharing of risk and reward**. Here, our key questions posed were: *Who pays and who cross-subsidises*?; *What is the goal hoping to be achieved?*; and *Who pays what costs?* The suggested principles are as follows:

Costs should be met by those who: benefit from the service; are best able to manage the risks; and cause pollution.

A joined-up & cumulative approach to long-term fairness and affordability is needed.

51. Interestingly, there was little push back from the organisations we spoke to on this principle, with companies agreed that a more **joined-up approach** was needed, and in principle agreeing to the '**polluter pays**' principle. However, there was perhaps a need to introduce a deliberative dimension to the principle on sharing risk and reward, with wording to the effect that '**those paying for a service ought to have had the opportunity to be consulted on the service**' and that this service's **costs ought to be transparent**. This could clearly link up to the proposed principles on procedural fairness.

<u>Fair Opportunities</u>

52. Finally, we tackled the more difficult boundary issues and grey areas, and how energy and water companies might approach these so as to better provide **fair opportunities**. In each of the talk into action discussions, we invited companies to demonstrate how they **navigate boundaries** on challenging and concrete issues

concerning fair treatment of people and planet, and asked whether the following principles might help to add clarity going forward:

A focus on delivering long-term public interest outcomes can help identify emerging boundary issues and discover the mutual interests / co-benefits that may help overcome these.

Strategic current and future customer / citizen journey mapping can test assumptions and help clarify roles and responsibilities.

53. One company observed that this principle on navigating difficult boundaries was, perhaps inevitably, less 'intuitive' than the preceding proposed principles. Nevertheless, the principle was felt to go to the nub of the issue around fairness and the difficulty in reaching fair solutions, and importantly it stresses the need to clarify all stakeholders' respective roles and responsibilities. The company reported that **accountability was absolutely integral for achieving fair outcomes, as one cannot determine what is fair if the various parties do not know where these boundaries lie**. There was again perceived to have been a **lack of leadership** from government and regulators, and this was said to have led non-political organisations (i.e. the companies), into the more 'political' role of formulating and delivering policy for customers in vulnerable situations.

54. Indeed, companies felt that this principle ought to be strengthened in its wording: that rather than being framed as the potentially vague 'navigating boundaries', it ought to more explicitly reference the need for '**clarity of who is responsible and accountable**'. Finally, a third company welcomed the principle's focus on the **long term** – crucial given both energy and water companies' roles as long-term stewards of valuable assets.

55. Going forward, stakeholders we spoke to recognise the need now to **turn principles into practice**. This will be Sustainability First's focus as we move into the second half of the Fair for the Future project in 2020. We will in the coming months produce a final talk into action paper for **Pillar 4, Strategy and Narratives**, and more broadly will continue to iterate our thinking on what a Sustainable Licence to Operate might look like in energy and water sectors.

56. Our mid-project report, *Delivering on fairness and the environment: An agenda for responsible business in UK regulated utilities*, sets out our next steps more fully. As always, if you would like to be involved in this work, please do not hesitate to get in touch with our Research Officer at kieran.dodds@sustainabilityfirst.org.uk.

Annex 1: Talk into Action questions for energy and water companies on Pillar 3 – Fairness: Expectations, Roles, and Responsibilities

Sustainability First – Fair for the Future Project

Developing a 'Sustainable Licence to Operate' for the energy and water sectors

Talk into Action – Fairness: Expectations, Roles and Responsibilities

The topic: There is currently much discussion about what 'fairness' is in the energy and water context, and what roles and responsibilities the various parties (governments, regulators, companies, citizens, customers and consumer groups) should have in terms of securing the delivery of 'fair' outcomes and developing a shared view on what is 'fair'. Effective engagement between and among all stakeholders is key to the development of a position that will gain widespread support.

Purpose of these 'Talk into action' questions: The questions below came out of a Sustainability First Fair for the Future Project workshop on this topic on 25 June. We will hold bilateral interviews with companies during the early autumn to discuss their views and collect examples of good practice.

The three questions will seek to **build a better consensus** on the components and processes to be considered by all parties in assessing fairness.

At the workshop we explored **four key strands that can frame the debate on fairness** (additional needs/potential vulnerabilities; inequality; insecurity; and the environment/low carbon transition). In our one-to-one discussions we want to explore this framing and the associated expectations, roles and responsibilities with you. We also intend to discuss these themes with regulators and government to build their views into our final project papers.

1. **Can we achieve a clearer definition of what fairness means in energy and water?**

We want to understand **how** your company approaches the issue of fairness in developing its business plan and strategy and how it takes account of the different position of individual stakeholder groups to develop a consistent approach to the issue. To assist this discussion it would be useful to explore some **concrete examples of decisions your organization has taken which aligned / balanced different interests to develop a 'fair' outcome**. Could you come to the call prepared to talk about examples, from a customer/citizen perspective, of your own initiatives or experiences that you would view as demonstrating 'fair' and 'unfair' treatment and set out **how** you approached the decision? We are particularly keen to discuss examples where things aren't necessarily clear-cut and how you have approached them.

2. **Are the ‘fairness’ principles set out at the workshop the right principles?**

At the workshop we highlighted some possible principles for thinking about procedural and distributive fairness and fairness of opportunities. These are summarized in Appendix 1 to this paper. In our call we would like to get your views on the proposed principles and the questions posed on them. These are somewhat detailed, and we will all get most out of the meeting if you have a chance to consider them and discuss them internally in advance.

3. **Do the roles and responsibilities of key players need greater clarity so accountabilities are better understood and agreed, can be applied consistently by all parties and evolve to meet changing needs?**

a. From your perspective, what are the **key blockers and enablers** around achieving greater clarity in terms of roles and responsibilities around fairness? Do you recognize the challenges and opportunities around future roles and responsibilities set out in Appendix 2 and what can your organisation do to address these? Is anything missing?

b. The workshop considered a proposal on the future focus for companies, regulators and government in terms of **who should engage on what to maximise legitimacy and address future challenges**. This is attached as Appendix 3. In our call we would like to discuss your views on this and to explore **whether there is consensus on the future focus**. If you believe greater clarity is needed, we would also like to discuss what steps you and others should take to achieve this.

c. We know from our research that some organisations (e.g. Peabody who were the subject of the case study) decided not to use some legislative rights available to them, as they did not believe they facilitated fair outcomes. We would like to discuss your views on how your organisation might have approached consideration of similar topics. Are your shareholders and board interested in **developing ‘fair’ solutions / approaches in a less politicised environment** and what steps have they taken towards this?

d. Do you think it would be helpful to arrange a **workshop with other key players to discuss fairness in a less politicised format** to develop longer-term principles on fairness?

Annex 2: Possible principles for thinking about procedural and distributive fairness and fairness of opportunities

Procedural Fairness – Key Questions on Process

1. Who is the decision maker?
• Who frames the question?
• Who is accountable & for what?

2. Is it clear what the decision-making process is?
• Is 'scheme of delegation' clear, simple and understood?
• Are there clear and explicit explanations for decisions?
• Are assumptions transparent?
• Are decision makers aware of 'context' of decisions?
• Is there independent assurance of the process?

3. Are decisions being made in a consistent way?
• Within and across sectors – electricity/gas/heat/water
• Over time – 'legitimate' expectations
• For 'similar' users

A possible principle

• The greater the a) distributional impacts and b) degree of ethical or political judgement, the greater the importance in the decision-making process of accountability, transparency and consistency – and the decision maker having a democratic mandate.

Distributional Fairness – Key Questions on Sharing Risk & Reward

1. Who pays and who cross-subsidises?
• Consumers (I&C, domestic, consumers in vulnerable situations, sticky customers, rural and urban etc.)/investors
• Citizens as taxpayers
• Other stakeholders (the environment/nature etc.)
• Communities/regions/nations ('Equitable decentralization')

2. What's the goal?
• Equity (pay what you use/contribute)
• Equality (all pay the same)
• Meet needs (ability to pay and minimum standards)

3. Who pays what costs?
• Fixed costs/variable costs
• Access costs
• Natural capital costs
• Institutional/transition costs etc.

Some possible principles

• Costs should be met by those who: benefit from the service; are best able to manage the risks; and cause pollution.
• A joined-up & cumulative approach to long-term fairness & affordability is needed

Fair Opportunities – Key Questions on Navigating Boundaries

1. Are access/capability issues given due attention?
• To broadband/enabling tech/smart kit etc.
• After disruption – response/recovery
• To data (for ALL stakeholders)
• For customers in vulnerable situations – support etc.
• Are responsibilities clear and is there adequate signposting between different actors?

2. Do approaches to fairness work in practice?
• Solutions and approaches trialled in 'real' world – and take account of complexity, dynamism and realpolitik
• Meaningful stakeholder engagement and redress – clear responsibilities for resourcing and support

Some possible principles

• A focus on delivering long-term public interest outcomes can help identify emerging boundary issues and discover the mutual interests / co-benefits that may help overcome these
• Strategic current and future customer / citizen journey mapping can test assumptions & help clarify roles & responsibilities

Annex 3: Fairness: Future Roles and Responsibilities – Challenges and Opportunities

Key issues	Challenges	Opportunities
1. How are future roles framed?	• 'Rear view mirror' • Ad hoc & piecemeal approach – primarily through price reviews, set piece decisions etc. • Short term outcomes for individual organisations	• Focus on long-term public interest outcomes for sectors and systems • 'Future antennae' • Strategic and cumulative approach
2. How are remits set and exercised?	• Silo-based • Limited governance of 'boundary issues' • Rigid interpretation of duties / licences etc. 'Not my responsibility'	• Cross department / sector joined up • Clear schemes of delegation – within and between organisations • 'Advocacy' & 'calling out' / signposting if issues are not within organisation's remit
3. How do roles align / balance interests?	• Focus on individual / organisation's interests • Lack of accountability / transparency in process- or this is delegated to 'technical' processes	• Focus on mutual interests • Strategic, systematic & 'legitimate' stakeholder engagement shapes process
4. How do roles flex / cope with change?	• Top down, wait and see changes to roles etc. • Roles determined by homogeneous groups drawn from largely quantitative disciplines (engineering, accountancy, economics etc.)	• 'Nail down' big decisions as far as possible to minimise uncertainty • Decisions around roles to *some extent* 'pushed down' & decentralised / distributed • Cognitive diversity and making full use of interdisciplinary skills in decision makers
5. Practical implementation	• Short-term and adversarial	• Constructive behaviours • Nested governance that emphasises common ground • Consistent application of principles

Source: Sustainability First

Annex 4: Who should engage on what to maximise legitimacy and address future challenges?