

**What role did knowledges of ‘consumers’
play in the formulation of GB energy market
regulation between 2000 and 2016?**

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A thesis submitted to the School of Politics, Philosophy,
Language and Communication Studies, University of East
Anglia for the degree of Doctor of Philosophy, March 2020

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Abstract

This thesis examined the role that knowledges of 'consumers' played in the formulation of energy market regulation in Great Britain between 2000 and 2016. The thesis found, based on documentary analysis, elite interviews and process tracing and mapping, that during this period there was not equitable access to the procedures of retail energy market regulation. Such equitable access was undermined by three features.

First, energy regulation was embedded in a complex policy system of interacting institutions and organisations. Second, there were resource inequalities between policy actors. Third, there was an inequality of respect for different knowledges - that is the ways of understanding people who use energy - within procedures of energy regulation. These three features resulted in preferential access to regulatory procedures for energy supply firms who had the resources to make the case to regulators with evidence of market engagement which was accepted as credible and relevant to regulatory decision making.

Inequitable access to regulatory procedures meant a failure of energy regulation to meet the standards set in terms of regulatory legitimacy and energy justice - equal access for diverse voices. Preferential access of firms to regulatory processes undermines regulatory legitimacy and procedural justice. This analysis identifies the role of epistemic capture - capture by ideas - of market logics within economic regulation between 2000 and 2016. The repeated failures to incorporate diverse knowledges meant that successive market reforms failed to incorporate the nuanced understanding of people who use energy presented by diverse voices in regulatory procedures and visible in the regulators own research. The inability of the regulator to implement market reforms which incorporated ways of knowing people beyond deficit concepts of consumers led to a series of unfair outcomes in the energy market between 2000 and 2016 - unaffordable energy for some of the most vulnerable groups in society.

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Acronyms

ADR - Alternative Dispute Resolution

CMA - Competition and Markets Authority

EJF - Energy Justice Framework

GB - Great Britain

NI - Northern Ireland

Ofgem - Office of Gas and Electricity Markets

PPM - Pre Payment Meter

TPF - Tools of Policy Formulation

UK - United Kingdom

WPR - What is the Problem Represented to Be

Legislation

Utilities Act - 2000

Warm Homes and Conservation Act - 2000

Energy Act - 2004

Energy Act - 2008

Energy Act - 2010

Equalities Act - 2010

Energy Act - 2011

Energy Act - 2013

Enterprise and Regulatory Reform Act - 2013

Acknowledgements

A comprehensive list of thanks here would require at least another 345 pages but I attempt here to reflect my gratitude to the legion of supporters of this project.

This research could not have been attempted without the generous support of the Centre for Competition Policy PhD studentship. I was also able to extend my engagement with the Energy Justice literature due to securing funding from the UKERC flexible Research fund in the “Equity and Justice” theme.

My leap into the unknown was ably abetted by my wonderful, if surprised, family. Very quickly this became an extensive extended network of free childcare provision without which my hopes of continuing to juggle work and parenthood would have come to nothing. Instead, I was able to cobble together enough hours in the day to slowly but surely bring together what would eventually become the analysis in this thesis.

I believe this analysis would have been severely limited if not for my open minded and generous participants. My interviews took place against a backdrop of busy offices, whirring coffee machines and the distractions of the day to day dramatic unfolding of events in the energy market. Despite the plethora of distractions, my participants provided their time to describe their experiences.

I was incredibly fortunate to benefit from the support and advice of three fantastic supervisors. First, Sally Broughton Micova who stepped in for my final year and helped enormously with my challenges turning my long, unwieldy reflections on my research into a thesis. Second, Catherine Waddams whose open-minded approach to alternative approaches from different disciplines I try to replicate in my own work. I was very lucky to benefit from the honesty of Catherine and Sally on the first years of parenting from the academy was invaluable in my own decision making and their practical approach was invaluable at a very challenging time. None of this work would have been possible without the calm, constant guidance of my primary supervisor, John Turnpenny. There would have been no funding to start, encouragement to keep going or the resilience to finish without John’s unending supply of support. I am indebted to them all.

Chapter 1 - Introduction

“Pensioners found dead after gas was cut off over a £140 bill” was the stark headline carried by the Independent newspaper in December 2003 (Akbar 2003). The news across the UK expanded on the story: a couple in their eighties were found dead in their home three days before Christmas, after British Gas had disconnected their gas supply leaving them without any heating. Despite headlines in the press and questions in the House of Commons, no action was taken against British Gas (House of Commons Select Committee on Trade and Industry 2005). Despite the serious consequences, the gas bill had not been paid. No law or regulation had been breached in ceasing to supply gas to the home of Mr and Mrs Bates. Further, the case itself was not of sufficient concern to result in any changes in the law or in regulation to stop such a case occurring again (Ofgem 2005e). The scenario is, in fact, far from unique. The Independent newspaper noted that unaffordable energy bills had led to 15,000 deaths in 2014 (Independent 2015).

Despite public concern as voiced in the press and continued pressure from elected representatives, the actions of energy suppliers in restricting access to necessary energy in the home remained unchanged by successive governments (National Energy Action and E3G 2018). Instead, in 2000, powers to restrict the actions of energy supply companies were given to an economic regulator, the Office of Gas and Electricity Markets (Ofgem). However, from its inception until the time of writing, death as a result of a lack of energy supply has not been the focus of the energy market regulator. As I go on to explain in this thesis, despite the deadly consequences of the actions of energy suppliers and the consistent concern of the public and their elected representatives, Ofgem’s predominant focus has been the efficient functioning of the market and promoting the message that people in their

homes should engage with the market to secure low prices. As one participant in my research put it:

“...through all the ups and downs, and to the current day, it is always ‘You can be an energy shopper’” (Participant Ad3, 2017).

Access to energy to ensure a warm home is not a luxury but a necessity (United Nations 1996). As the above story shows, like other necessities required for life, restricted access to energy through limited income can lead not only to poor health but to premature death (National Energy Action 2019). The particular tragedy of Mr and Mrs Bates suggests that something had gone very wrong with the way that people are supplied with, purchase and consume energy in their homes in the UK, leading to many difficult questions. How and by whom are decisions actually made around energy supply, pricing, distribution and use? What role do different people and organisations play in this decision-making? What sorts of knowledge and evidence - and ways of gathering these - are employed in decision-making around energy supply, and how are these different sorts of knowledge viewed and deployed, and with what effect? Addressing these questions would generate a better understanding of what leads to people dying in their homes for lack of energy. Such understanding also requires understanding the procedures of policy decision-making around energy supply, pricing, distribution and use. This in turn involves identifying the different people and organisations and the roles they play in this decision-making.

The key feature of decision-making regarding energy markets policy in Great Britain is that it has been largely delegated from elected representatives to a market regulator (Helm 2004; Robinson 2002). To understand the chasm that has opened up in terms of expectations is therefore to understand the series of decisions taken that led to the energy market arrangements in which the Bates case occurred. How

were these decisions made and by whom? What legitimacy did those decisions have? Investigating these questions can help to understand how unaffordable energy in the home has resulted in an average of 9,700 deaths every year, with few consequences for the energy firms who control the price that restricts access to that energy (Guertler and Smith, 2018).

I argue that the unjust decision-making by the energy regulator in GB was the result of a narrow understanding of the people who use energy in their homes: the tendency to view them almost exclusively as purchasing consumers in need of information. My findings explain that this manner of understanding - or way of knowing - which was used by decision makers, limited the way in which decision makers made predictions about the outcomes of the energy market and the type of experts with whom they interacted to make regulatory policy. The limitations of decision-making that are identified by the research in this thesis raise difficult questions in terms of the expectations of regulatory institutions and their legitimacy. Theoretically, an important element of regulatory legitimacy is equal access to decision makers (Baldwin, Cave, and Lodge 2012; Ogus 2004; Koop and Lodge 2017). My research findings identify significant limitations in terms of access to decision makers and the procedures of policy-making. Specifically, those regularly engaging with the regulator saw people who use energy simply as consumers within the energy market. I argue that the limitation identified in this research has an impact on the fairness of outcomes in the energy market and, ultimately, the affordability of energy in Great Britain.

The aim of the research discussed in this thesis was to answer the issues raised by revealing what role knowledges of 'consumers' played in the formulation of GB energy policy and market regulation between 2000 and 2016. The case of Mr and Mrs Bates and the regulatory policy response described at the start of this chapter illustrates the chasm that was created between the expectations of the public and

their elected representatives and the regulations regarding the limitations on energy firms. On the one hand, the public expect protection from harms to health and life from unaffordable energy (Becker et al. 2019; Demski et al. 2017). On the other hand, there is the expectation from institutions of energy governance that energy supply firms will be self-regulating within a market (Helm 2007; Kern, Kuzemko, and Mitchell 2014; Kuzemko et al. 2016). This disconnect between expectations was created as a result of a series of decisions regarding energy system ownership and control - a change from state official accountability to society to private firms accountable to their shareholders (Helm, Kay, and Thompson 1989; Littlechild 2006). A useful way to begin to address the aim of the research is to examine the different elements of the UK energy policy landscape (Deller et al. 2018; Helm 2004). There are several key elements to this: devolved decision-making, markets, affordability, fairness and regulation. These different elements are explained in this chapter in the following sections.

1.1 Regulatory Energy Policy in Great Britain

To answer the questions I have described above requires a detailed understanding of the energy policy framework between 2000 and 2016. Devolved decision making in energy policy and its implementation in the UK occurred across three levels of governance (Kern et al. 2014; Kuzemko et al. 2016; Lockwood et al. 2017). The first level included policies developed by UK Government departments and scrutinised by the Houses of Parliament (Price 1997; Lockwood et al. 2017). The second level included the energy policies that relate specifically to each of the individual countries that make up the United Kingdom: Northern Ireland, Scotland, Wales and England (Mould and Baker 2017; Muinzer and Ellis 2017). Each country had specific areas of energy policy devolved to the parliaments and assemblies. The third and final level related to the regulatory governance, that is, the regulation of energy distribution and supply (Littlechild 1983; Thomas 2019). This third level reflects the

geographical distinction in that period between the two energy markets, one in Northern Ireland and one in Great Britain. Affordability in Northern Ireland was a consideration in the control of prices for people who use energy in their homes (URNI 2019). However, in Great Britain (GB) between 2000 and 2016 price regulations were minimal, with the final cap lifted in 2002 (Waddams Price 2018).

Looking at energy markets, they have been both enthusiastically supported and roundly critiqued (Deller et al. 2018). The primary focus of energy policy in GB between 2000 and 2016 was on markets that delivered benefits to consumers (Garrod et al. 2008; Helm 2007). With one of the world's longest-standing commitments to privately owned energy assets, market design and investment were the central focus of GB policy makers and in research of those market designs (Crew and Parker, 2006; Helm, 2004; Price, 2008). Within this framework, people who used energy in their homes were conceptualised as 'consumers', whose choice of products and suppliers provided pressure on market players (Littlechild 2002, 2008). This was not specific to GB energy (Crew and Parker 2006; Frantzeskaki, Loorbach, and Meadowcroft 2012). In market economies, access to necessities is managed through a market: only those who can pay can access necessary goods such as food. What is specific to the GB energy market between 2000 and 2016 is that it was designed with features specifically selected and implemented by policy makers based on a specific set of logics (Littlechild 2019), which in turn were based on an assumption of a range of positive outcomes of an energy market: consistent investment in infrastructure, efficient prices and attractive consumer products (Defeuilley, 2009; Littlechild, 2008).

The decision to implement a competitive energy market was accompanied in GB by a logic of positive outcomes (Littlechild 1983, 2006; Thomas 2016). Industry was promised reduced risk of political interference to secure investment and people who used energy would secure a price for that energy that was lower than would be

available without competition (Jamansb and Littlechild 2004; Littlechild 2006).

Conversely, people who used energy in their homes would be empowered to engage in the market and their activity would deliver positive market outcomes for all (Cseres, 2008; Defeuilley, 2009; Littlechild, 2009). Firms that offered lower prices and high quality service would thrive and those who did not would have so few customers that they would be forced to exit the market (Helm 2004; Littlechild 2002; Robinson 2002). Even those who did not engage in the market themselves would benefit from low prices, as the market would only include efficient, high quality firms (Littlechild 2006; Ogus 2004; Robinson 2007).

Such faith in energy markets and their outcomes was not, however, universal. Third sector organisations and the press articulated the impact of existing market structures, namely that a growing number of people could not afford to heat their homes. This narrative focused on the lack of affordable energy in homes and identified the pricing decisions of energy supply firms as the cause (National Energy Action 2019; National Energy Action and E3G 2018). The narrative of unaffordable prices introduced an alternative characterisation of market structures - not that market structure was driving behaviours of firms deemed desirable but that the outcomes of regulation were unfair (Deller et al. 2018). At the core of the argument that prices were unfair was that energy supply firms were able to secure profits while some of the most vulnerable people in society died as a result of being unable to afford sufficient energy in their homes (National Energy Action and E3G 2018).

By 2016, much public and political opinion outrightly rejected the logic of positive outcomes within energy markets, following the failure of markets to lead to positive outcomes for a sufficient number of consumers in GB (Demski et al. 2017). Instead, evidence in a series of market reviews explained that firms could easily reward only new customers with lower energy prices (Competition and Markets

Authority 2016c; Ofgem 2008b, 2010f). The operation of pricing decision-making within energy supply companies and their impact of affordability was identified as far more complex than the expectation of positive consumer outcomes for all due to a competitive market driving down average prices (Deller et al. 2018). The practical outcome of energy supply market arrangements instead saw different groups of people accessing different prices (Price and Zhu 2016). These prices reflected the ability of an individual to engage with the energy market and did not reflect affordability pressures. Whether or not energy was affordable for people in their homes was not necessarily a straightforward outcome of the energy markets structure where prices were, on average, lower across all households if compared to an alternative model to the competitive retail energy market (Ofgem 2014a).

While the market mechanisms designed sought to reward those consumers who engaged in the market, the consequence was punishment for those who did not. During the first seventeen years of economic regulation in the energy market, this inequality between those who engaged and those who did not was exacerbated by demographics: those who were least likely to secure low prices through market engagement were those on low incomes, with caring responsibilities or of a pensionable age (Competition and Markets Authority 2019). That some of the most vulnerable households in society had the least affordable energy may not have had an impact on the efficient operation of an energy market. However, the inequitable distribution of the benefits and costs did influence the acceptability of an energy market to the GB public and their elected representatives (Deller et al. 2018).

The outcomes of the energy market resulted in consistent calls for those in power to 'do something' to ensure energy that was affordable and outcomes that were fair (National Energy Action and E3G 2018). The responses to 'do something' began with Government spending: those who were identified as at highest risk of dying in the cold received specific income support for winter energy bills and a programme of

installation of warm home measures such as new boilers began in 2000 (Sovacool 2013). Affordable energy would be secured, under these programmes, by ensuring lower energy needs and higher disposable incomes. However, the impact of the structures of the energy market was not part of the policies considered to respond to the problem of energy affordability, with small Corporate Social Responsibility programmes seen as sufficient at this time (Ofgem 2005e). Empowered consumers could, after all, punish firms that did not do their bit for society by switching to an energy company who did. Energy prices were acknowledged as part of the cause of unaffordable energy but beyond the scope of significant intervention (Sovacool, 2013; Walker and Day, 2012).

A significant policy change came after 2008 and Government spending on keeping homes warm reduced significantly after the financial crisis (Department of Energy and Climate Change 2015b). Without the willingness to commit further taxpayer funds to warm homes, energy companies fell under pressure to support those unable to pay for a warm home directly through discounted energy bills. This began with a “Voluntary Agreement” for support to those who the energy company believed should be supported (Ofgem 2008f, 2010d, 2011e). In 2011, support from energy suppliers was replaced by customers receiving pension credit aligning with a decrease in a similar payment to pensioners from the Department of Work and Pensions’ Winter Fuel Allowance (Department of Energy and Climate Change 2015b).

There was therefore an increase in affordable energy programmes, designed by the UK Government, delivered by energy supply firms and monitored by the energy regulator (Deller et al. 2018). The findings of this thesis suggest that even as energy supply firms took on the responsibility for affordable energy schemes, no parallel policy questions were posed regarding the energy supply markets in setting energy prices for people in their homes. Faith that the market would deliver the lowest

price was maintained within the institutions with the power to support maintaining the status quo or to bring about change.

While direct interventions to improve affordability and fairness had varied support and mixed results, one central element in the development and delivery of policies for affordable energy in Great Britain continued throughout: regulation of market participants by the economic regulator, the Office of Gas and Electricity Markets (Ofgem). Ofgem was founded in 2000 through the Utilities Act which:

“...establishes a single Gas and Electricity Markets Authority (“the Authority”), in place of the twin posts of Director-General of Gas Supply and Director-General of Electricity Supply [and] contains provisions to enable the gas and electricity sectors to make an appropriate contribution to the Government’s social and environmental objectives. It contains provisions to make regulation more transparent and predictable. The Act also updates the regulatory regime for the gas and electricity sectors to take account of and to facilitate further competition.”

Utilities Act 2000 Explanatory Notes C2.7 (The National Archive 2000)

In GB, this meant that Ofgem developed and implemented regulatory policies regarding the energy market. Ofgem set the rules that governed how energy market participants interacted and the limits on their behaviour (Department of Business, Innovation and Skills 2011; Ofgem 2016j). While in some other countries this includes setting a maximum price for a unit of energy, Ofgem did not regulate any energy prices between 2002 and 2016 (Deller et al. 2018; Waddams Price 2018). The statutory powers of Ofgem reflect the expectations of an economic regulator where previously nationalised industries are privatised (Helm 2004; Littlechild 1983; Robinson 2002). The role of an economic regulator is to manage a market through setting out the standards that firms providing a specific service must meet by setting rules. An economic regulator then measures the performance of firms

against those standards and intervenes if standards are breached. The statutory powers provided to an economic regulator means that there is an alternative model of policy making compared to the standard UK parliamentary procedures of creating laws that govern the behaviour of firms directly (Baldwin et al. 2012; Koop and Lodge 2017; Robinson 2002, 2006). The statutory powers of the economic regulator itself follow the standard policy development procedures - the Government bring legislation to the Houses of Parliament which is scrutinised and, in the majority of cases, passed (Leston-Bandeira and Thompson 2017; Olson 2015; Russell, Gover, and Wollter 2016). The statutory powers of the economic regulator include policy making within its domain (Baldwin et al. 2012; Ogus 2004). Under their statutory powers, the economic regulator would then make regulatory policies under their mandate (Crew and Parker 2006; Robinson 2007).

The statutory powers of Ofgem did not stay the same over the period studied. Between 2000 and 2016, the regulator's statutory powers were changed five times in successive Energy Acts (Deller et al. 2018). However, I found through my analysis that the regulator's output appears to have been quite tightly bounded and relatively unchanged. In regulatory reviews of the energy market between 2008 and 2016, it did not engage with the questions of whether market outcomes were fair. Instead, Ofgem and the Competition and Markets Authority focused on the question of whether market structures were organised in a manner that resulted in efficient outcomes (Ofgem, 2008; Ofgem 2010a; Competition and Markets Authority, 2016).

Classical regulatory theory states that a regulator needs to pass five tests to be able to exercise its powers: support from legislative authority; a scheme of accountability; relevant expertise; efficiency within the organisation; and procedures which are fair, accessible and open (Baldwin, Cave, and Lodge 2010b; Baldwin et al. 2012; Ogus 2004; Robinson 2007). In practice, UK economic regulators followed guidance from the UK Government that they were to be

focused, predictable, coherent, adaptable, accountable and transparent (Department of Business, Innovation and Skills 2011). Accountability operates through scrutiny via parliamentary select committees which ensure that regulators are acting in line with their statutory powers (Deller et al. 2018).

The disconnect in expectations from the perspective of market regulation of efficiency prices and public concern regarding affordable, fair prices poses a challenge to regulatory legitimacy (Baldwin et al. 2012; Koop and Lodge 2017). This includes accountability to democratic institutions, transparent procedures that include multiple perspectives, and expertise in delivering the regulator's statutory mandate (Baldwin et al. 2010b; Robinson 2007). This concept of regulatory legitimacy does not, however, support a description of how the functioning of a regulator might be identified as legitimate or otherwise (Koop and Lodge 2017). It is therefore not clear what the implications of concerns regarding fairness might have for how we conceptualise regulatory legitimacy.

The institutional framework from classical regulatory theory incorporates a scrutiny procedure that was enacted in GB through accountability to elected representatives in the House of Commons and devolved administrations in Scotland and Wales (Mould and Baker 2017). Theoretically, this provided a point at which economic regulators could be held accountable where there was a disconnect between the activities of a regulator and any expectations of fair outcomes from the public and their elected representatives (Baldwin et al. 2010b; Robinson 2007). However, the enduring public concern regarding the unfair and often fatal outcomes of the energy market without regulatory changes that acknowledge these concerns indicates that this accountability mechanism was not operating as theorised.

While affordability and fairness have been important ideas in the policy landscape, between 2000 and 2016, there appears to be a disconnect between these and the

focus of a key policy actor - the energy regulator - on the efficient operation of markets. A focus on market outcomes with efficient prices is distinctly different from the consideration of the affordability of energy and the fairness of outcomes that could result in significant hardship (National Energy Action and E3G 2018). This disconnect between the public and political view of energy market outcomes and that of the regulator became part of the narrative from third sector organisations, some politicians and the press from 2012 onwards, with questions posed on what role Ofgem as a regulator *should* play in policy making (Lodge and Stern 2014; Thomas 2019). Indeed, the debate regarding the role of the energy regulator in limiting the harms of unaffordable energy became a focus, with the opposition Labour Party manifesto for the 2015 election including a proposal for Ofgem to be abolished (Miliband, E. 2008; Labour Party Green Paper, 2013). However, the extent to which such critique influenced the outputs of the regulator is not immediately clear (Thomas 2016). The response of Ofgem to the concerns regarding its efficiency focused on its own view of the role of economic regulation regarding energy prices: to deliver competition that would incentivise energy supply firms to offer efficient prices to consumers (Littlechild 2019; Waddams Price 2018) (Littlechild, 2008; Waddams Price, 2018). This is unsurprising between 2000 and 2010 considering that the focus on the energy regulator was set out in legislation (Deller et al. 2018). In this period, the majority of the powers granted to Ofgem were in line with the original logic of the introduction of markets into utilities under the Thatcher and Major Governments between 1979 and 1997 (Helm 2004; Lodge and Stern 2014). However, the statutory powers of Ofgem were changed in the Energy Act of 2011 to consider the impact of factors beyond competition in Ofgem's decision making. However, my analysis found that there was little opportunity to allow for disagreements in how the active decision-making within a regulator might vary over time. This may help explain the distinction between

expectations of the role of an energy regulator as conceived by Ofgem and the vocal critics of Ofgem's approach, but it remains an open question.

In sum, these key elements of GB energy policy - devolved decision-making, markets, affordability, fairness, and regulation - developed and interacted in such a way as to produce controversial (and in some cases fatal) outcomes, particularly around delivery of major policy priorities. This thesis presents the results of a detailed investigation into GB energy policy, in particular the operation of energy market regulation by Ofgem. What did the regulatory procedures and actors do or not do? How did they respond to critiques? Who was involved and how? Whose knowledge was represented and how influential was it? What have the outcomes been on different groups of people? To address the above puzzles, the thesis looks in detail at energy market regulation since the establishment of Ofgem in 2000.

1.2 Analysing Energy Market Regulation in GB 2000 - 2016

I undertook research that sought answers to the questions described in the section above by drawing on several different academic literatures, in order to incorporate different conceptual frameworks and analytical tools. The first of these, Regulatory Studies, provides insight regarding the theoretical and actual outcomes of styles of regulation and regulatory policies, drawing on the disciplines of economics, law and institution-focused political science (Baldwin, Cave, and Lodge 2010a; Koop and Lodge 2017; Robinson 2007). An important question in the Regulatory Studies literature focuses on the ability of regulatory institutions to change once the regulator's obligations in law are set out in statute (Baldwin et al. 2012; Robinson 2002).

The predominant focus in Regulatory Studies is how the regulator may change its decision-making in response to elected representatives or regulated firms (Koop and

Lodge 2017; Lodge and Stern 2014). However, there is an absence of studies that consider whether energy regulation is, or should be, responsive to its societal context. This means that Regulatory Studies has yet to consider how concerns regarding fairness of energy market outcomes could develop or change over time. This could have implications for a key consideration which has been the focus of research in Regulatory Studies: the legitimacy of regulatory institutions (Baldwin et al. 2012). In the GB context, enduring concern about the fairness of energy market outcomes in terms of the affordability of household energy bills, resulted in a political questioning of the regulator Ofgem (House of Commons Select Committee on Business and Enterprise 2008; House of Commons Select Committee on Energy and Climate Change 2013; House of Commons Select Committee on Trade and Industry 2005). However, prior to the research undertaken in this thesis, no analysis had attempted to connect the theoretical concerns regarding the legitimacy of regulatory institutions to an empirical case that incorporates a concern regarding affordability of energy and fairness of energy prices.

Energy affordability and associated impacts on the extent to which it can be said to be fair or unfair has, however, been the focus of the second area of literature upon which I draw, namely Energy Justice. Scholars in this field conceptualise a lack of energy affordability as unfair and unjust (Deller et al. 2018; Snell, Bevan, and Thomson 2015; Walker and Day 2012). Lack of justice is connected to unaffordable energy on three factors: inequality of access to affordable energy due to distributional inequalities; inequality of access to policy procedures concerned with affordable energy; and inequality of recognition of needs for affordable energy (Bickerstaff, Walker, and Bulkeley 2013; K. Jenkins, Sovacool, and McCauley 2018; Sovacool 2013). Understanding how inequalities of distribution, recognition of needs and policy procedures function in impacting affordable energy, have predominantly focused on national government policy of the UK (Gillard, Snell, and Bevan 2017;

Simcock, Walker, and Day 2016a; Snell, Bevan, and Thomson 2014). These have not engaged with the impact of the energy market and its regulation in terms of the affordability of energy. This has meant that the fairness of the regulations that have resulted in lack of affordability of energy, have yet to be examined. This thesis seeks to close the gap in understanding of how regulatory policy-making impacted the fairness of energy affordability in GB when the price of energy was not regulated. It does this through presenting an empirical case study of energy regulation to understand how the operations and functioning of GB's energy regulator, Ofgem, were shaped by institutional expectations, which in turn influenced the price of energy paid by people in their homes.

Research from within a third area of literature, Energy Studies, identifies the impact of energy markets logics on decision-making on energy policies regarding the distribution of and demand for electricity in the UK (Cotton and Devine-Wright 2012; Shove and Walker 2014). This research finds that that the way in which policy makers understand people who use energy in their homes is limited to a concept of people as 'consumers'. This is a specific way of understanding or 'knowing' people who use energy in their homes. The identification of 'consumers' within electricity demand and distribution, results in the access of restriction of policy procedures (Devine-Wright 2012; Geels 2014; Scrase and Ockwell 2009). Whether an equivalent restriction of access to policy procedures occurred within regulatory policy making had not, at time of writing, been analysed. If similar limitations exist in the way in which energy policies support the affordability of energy to people in their homes, it could be that the way people are 'known' in regulatory policy has important implications for the scope and outcomes of those policies. To identify whether there was a similar restriction in the way in which people were understood within policy procedures in GB energy regulation as in the case studies from UK electricity policies and whether this has an impact on the fairness of regulatory policy

formulation, is the focus of this thesis. In order to conduct the research, I analysed how specific regulatory policies were made and their implications for fairness.

To address this, I used three contemporary analytic frameworks which had, to date, not been used in combination. Each contributes a different angle to examining the questions. To analyse the implications of the fairness of regulatory policies and their outcomes, the inequalities of distribution, procedures and recognition were identified using the Energy Justice Framework (Sovacool et al. 2016). This provided a foundation for understanding how regulatory policies distributed the benefits and costs associated with the GB energy market and whether those policies were developed in an equitable manner. However, identifying the extent to which regulatory policies are developed in an equitable manner is limited without understanding *how* and *why* regulatory policies are developed. Therefore, in addition to the Energy Justice Framework I applied two analytical frameworks from the field of policy studies. The second policy analysis framework used was the “Tools of Policy Formulation” (TPF) framework (Jordan and Turnpenny 2015). Applying the TPF framework identifies *how* particular regulatory policies were developed and delivered between 2000 and 2016. This provides insight into how the tools used within the regulator were embedded, through translating Ofgem’s implicit embedded assumptions into regulatory policies. The second framework was the “What is the Problem Represented to Be” (WPR) approach (Bacchi 2009a). Applying the WPR framework helped to identify *why* particular regulatory policies were developed and delivered between 2000 and 2016. This provided insight into what problem or problems the regulator, Ofgem, set out to solve and what particular embedded implicit assumptions were in operation, as regulatory policies to address particular problems were developed.

Each of the frameworks, Energy Justice Framework, “Tools of Policy Formulation” and “What is the Problem Represented to Be”, were used to analyse a corpus of

policy documents and interview transcripts, examining the initial seventeen years of the energy market regulator in GB - Ofgem. Together, the frameworks provide an analysis of the extent to which the implicit assumptions embedded within the regulator bounded the regulatory policies developed and delivered between 2000 and 2016 and the extent to which those policies impacted inequitable access to affordable energy in GB homes. Insight provided by this analysis identifies what the implicit expectations of the behaviour of people who use energy in their homes were within GB energy regulatory decision-making. It enables the elaboration of how those expectations were set, embedded and to what extent it could have been possible to challenge them.

In summary, the period 2000 to 2016 saw a continuous concern raised by the public and their elected representatives that energy was not affordable and energy markets were not fair. The policy procedures that might have responded to these concerns were within economic regulation. These processes- policy formulation procedures - were notoriously opaque and undertaken by experts.

I describe these processes in order to explain why the experts formulating regulatory policies failed to respond to public and political concerns regarding affordability. The activities of regulators have been described in Regulatory Studies but not in terms of their responsiveness to concerns regarding fairness and rarely in terms of incorporating public concerns. Energy Justice research, on the other hand, engages directly in revealing unfair outcomes of policy making and concerns from the public regarding affordability of energy. It does this by identifying distributional, recognition and procedural inequalities and their interaction. Energy Justice research has not, however, engaged directly in the detailed analysis of regulatory policy procedures. To engage directly with the political 'netherworld' of policy formulation, I therefore extended my analysis to explain how and why policy

procedures resulted in prices that were characterised in society as unfair and unaffordable.

Research from Energy Studies suggests that defining people who use energy in their homes as ‘consumers’ could play a role in limiting policy outcomes. Analysis of the energy system beyond regulation indicates that the way that acknowledged experts within energy policy making procedures describe, define and explain policy problems has important effects on policy outcomes. This is because diverse ways of understanding people - or ‘knowledges’ - are not equally influential in policy procedures (Haas, 2004; Nowotny, 2003). Instead, only some knowledges in a policy area are accepted as credible, salient and legitimate (Boswell 2008; Cash et al. 2003; Shove 1997).

In order to reveal whether such limitations in the way of knowing operated within regulation of the energy market between 2000 and 2016, I set out to identify features of their policy procedures and their effects. These effects include the effects of particular knowledges within policy procedures themselves, the role knowledges played in changing the way that people were known, and ultimately the effect of those policies on energy market operations and outcomes.

The key question in this thesis can be summarised as:

What role did knowledges of ‘consumers’ play in the formulation of GB energy market regulation between 2000 and 2016?

1.3 Plan of the thesis

How and why inclusion and exclusion function within the regulator has important implications for the extent to which regulatory policy development can be described as fair or just. My review of existing research identified a probable link between how people in their homes are conceptualised within an institution like

the regulator Ofgem and policy outcomes. I begin Chapter 2 by reviewing the academic literature that provides a foundation to understand why and how regulatory policy is developed. There are three areas of research that provide insight into this area: Regulatory Studies, Energy Justice scholarship and Energy Studies. Regulatory Studies research explains the features of regulatory institutions and how they might be evaluated. While there is no engagement with the concept of fairness, regulatory legitimacy in society is noted as an important - though rarely empirically researched - factor in considering how regulators function (Baldwin et al. 2012; Koop and Lodge 2017; Levi-Faur 2011). Energy Justice scholarship does engage directly with themes related to fairness. Noting that 'fairness' can be used interchangeable with 'just', Energy Justice scholarship provides a framework to evaluate the extent to which policies and their development can be described as inequitable, unjust or unfair (Heffron and McCauley 2017; K. Jenkins et al. 2018). This framework from Energy Justice scholarship identifies three interacting factors that must be present: distributional, recognition and procedural justice. Where these three factors are present, policies and their outcomes can be described as fair (Sovacool 2013; Walker and Day 2012). The final body of academic literature that provides a foundation for understanding the extent to which regulation could be described as fair, comes from Energy Studies. In Energy Studies, case studies identify influential limitations to the way in which institutions develop and implement policies - the embedded implicit assumptions of the institution itself (Devine-Wright 2012; Scrase and Ockwell 2010; Shove and Walker 2014). In particular, energy institutions examined in the field of Energy Studies explain the influence of institutional embedded implicit assumptions in shaping how the people impacted by those policies are 'known' or understood by policy makers. The review revealed that at the time of this study, there was no prior academic research

identifying the embedded implicit assumptions at Ofgem and how they might impact the fairness of energy regulation.

In Chapter 3, I explain how I analysed regulatory policy developments to identify the role of knowledges that were operating within Ofgem. I explain the creation of a corpus of GB energy regulation made up of publicly available documents and interview transcripts to analyse procedures and regulatory outputs between 2000 and 2016. As at the time of writing, no existing research had evaluated the fairness of regulation and the role that embedded implicit assumptions play in the fairness of regulation, I explain the use of the three contemporary analytics frameworks introduced above and how they were applied, to reveal the way that regulation functioned between 2000 and 2016 at Ofgem.

In Chapter 4, I provide an overview of regulatory policy between 2000 and 2016. This comprises the series of events that unfolded from the regulator in the context of Government legislation and parliamentary scrutiny. The timeline of regulatory policy explains the regulatory policies that were outputs of energy regulators in this period and the procedures that produced them. The political context of these regulations is also explained. The period 2000 to 2016 includes the implementation of significant changes to the statutory powers of the regulator to act. Further, a connected but discrete Government policy area regarding the affordability of energy, 'fuel poverty policy', was the focus of significant reforms in part of this period.

In Chapter 5, the distributional, recognition and procedural injustices of Ofgem's regulatory policies between 2000 and 2016 are identified. Distributional injustices of inequitable pricing identify that those who secured the benefits of GB energy markets were not those in low income demographic groups. Instead, those with lower incomes and higher needs of affordable energy are those who paid the

highest price for energy in their homes. Recognition injustice is identified in the acknowledgement and understanding of the energy needs of some, which did not result in any action to respond to those energy needs. Finally, procedural injustice is identified in the manner in which participation was not equitable for different groups of policy actors seeking to engage in policy procedures.

In Chapter 6, the way in which knowledges played a role within regulatory policy formulation between 2000 and 2016 are identified using the Tools of Policy Formulation (TPF) framework (Jordan and Turnpenny 2015). The formulation of policies at Ofgem provide a large number of opportunities to a range of policy actors to influence the way 'consumers' are known. However, the majority of these opportunities were evaluating and assessing options that already used the concept of purchasing consumers. This means that tools of policy formulation that were designed to include multiple perspectives failed to translate the knowledges of diverse perspectives into policy outputs. Instead, the existing way of 'knowing' people who use energy in their homes as consumers in the market was maintained between 2000 and 2016.

In Chapter 7, the representation of the problem implicit - and in many cases explicit - within Ofgem's regulatory policies between 2000 and 2016 is presented using the What is the Problem Represented to Be (WPR) framework (Bacchi 2009b). Ofgem's regulatory policies see the overarching problem for energy regulation are consumers. The framework of market interactions requires consumers to act in a manner consistent with economic theory - to be motivated to act to secure high-quality products and the lowest price. This study shows that people who use energy in their homes failed to act in the predicted manner, undermining the intended structure of the market and allowing firms to act in a harmful manner. Despite new characterisations of people who use energy in their homes present in regulatory procedures, the way of 'knowing' consumers as purchasers failing to act retained its

influence at Ofgem. The blaming of consumers for the outcomes of the energy market was not challenged by the accountability procedures which could do so, namely, the parliamentary Select committees. Instead, between 2000 and 2016, the expectations that consumers would engage in the energy market to drive efficient prices were maintained.

In Chapter 8, the findings from each thesis chapter are discussed to respond to my overarching research question. Each chapter of the thesis identifies opportunities for 'consumer' knowledges to influence regulatory policy formulation. Through a lens of recognition and procedural justice, these opportunities to understand, acknowledge and act on diverse energy needs are identified. The lens of policy formulation reveals precisely how the influential concept of 'consumers' as purchasers led to the regulatory policies between 2000 and 2016. This is because despite the use of tools of policy formulation specifically designed to bring diverse views together, the opportunities to impact regulatory policies rarely went beyond assessing options using the way of knowing 'consumers' already embedded within Ofgem. The lens of problem representation identifies that these opportunities did not, ultimately, result in regulatory policy outputs that incorporate diverse energy needs because only one way of knowing 'consumers' was influential: consumers as purchasers. I argue that these combined insights contribute to a new way of understanding regulatory legitimacy and extends the understanding of energy injustice into the realm of regulatory institutions.

Chapter 9 concludes this thesis by discussing what the findings of this thesis mean for the fairness of regulatory decisions that impact the affordability of energy. Regulatory legitimacy requires meaningful accountability of regulatory decision making. However, provision of opportunities to hold the regulator to account in a context where an overarching way of knowing about energy is unquestionable, does not meet this standard.

Chapter 2 - Literature Review

2.1 Research Foundation

In this literature review, I describe the three foundations for identifying whether regulatory policy can be described as fair in Great Britain. These three foundations are Regulatory Studies, Energy Justice and Energy Studies.

Regulatory Studies is a useful resource for understanding the history of institutional arrangements in GB, including why an energy regulator governs its energy markets and the expectations of how the regulator will operate. I draw on research from Regulatory Studies to describe the independent economic regulation in democratic institutions and the procedures that held regulators to account through parliament under statutory powers granted by Government (Baldwin et al., 2012). Regulatory Studies does this by providing indicative experience for the analysis of governance structures, including regulatory agencies (Baldwin et al. 2012; Levi-Faur 2011) and a foundation to explore the possible impact of economic regulation as a source of policies that focus on markets, that have implications for people in their homes (Haber 2015; Haber and Heims 2016). In this field, justice is not specifically the focus of evaluation. Instead, regulatory legitimacy is identified as an important factor in maintaining an institution independent from, but accountable to, democratically elected bodies (Jordana and Levi-Faur 2004; Levi-Faur 2011). Regulatory Studies does not, however, provide a foundation for understanding whether regulatory policy can be described as fair (Koop and Lodge 2017).

Energy Justice research provides a framework to evaluate whether policy procedures and outcomes can be described as fair (Jenkins et al. 2014; Sovacool

and Dworkin 2015a). Fair is used interchangeably in this field with the notion of justice. Energy policies are deemed fair if they can be characterised as distributing benefits in an equitable way that recognises diverse energy needs within inclusive decision-making procedures (Sovacool 2013; Sovacool et al. 2016). This framework for evaluation has been applied to understand the extent to which energy affordability policy in the UK can be described as ‘just’ (Simcock, Walker, and Day 2016b; Sovacool 2013; Walker and Day 2012). For example, using UK fuel poverty policy as a case study to identify how distributional injustices occur, Walker and Day (2012) describe the importance of understanding how different representatives who provide insight into diverse energy needs engage in policy procedures. However, while previous research had provided insight into how the Energy Justice framework could be applied to case studies, none applied it to a GB case that included the regulator, Ofgem.

Energy Studies research includes case studies from Great Britain beyond energy regulation, describing the importance for energy policy-making procedures and their outcomes, of analysing institutional settings. Previous research has described the importance of embedded implicit assumptions within decision making procedures regarding energy can shape policy outcomes (Devine-Wright 2012; Shove 1997). Case studies regarding decision-making in energy policy formulation builds on research that describes the impact of embedded and implicit assumptions related to how the people who are the target of such policies are understood or ‘known’ (Boswell 2009; Schneider, Ingram, and Ingram 2005). These case studies suggest that the way that people are ‘known’ within policy procedures could have important implications for inclusive policy making, which is explained by concerns in Energy Justice regarding just policy making and Regulatory Studies regarding legitimate regulation.

2.2 Regulatory Studies

Regulatory Studies provided the foundation for this study, which sought to identify features of regulatory policy in Great Britain in order to ascertain the extent to which they could be said to be fair. Research in this field also provided findings that support this thesis by characterising the institutional features of regulators, describing how regulators can be characterised as legitimate and by providing examples of how different groups - specifically, citizens and regulated firms - are included in regulation (Baldwin et al. 2010a, 2012; Haber and Heims 2016; Levi-Faur 2011). These are described in the sections below.

The first area of Regulation Studies to investigate the fairness of regulation is research that analyses the implications of regulatory institutions, institutions being “cognitive, normative and regulative structures and activities that provide stability and meaning to social behaviour” (Scott 2006 p. 33), their empirical operation and their outcomes (Koop and Lodge 2017). The ‘regulatory state’ is a description of the institutional arrangement within a state as one where the prominent policy paradigm is the regulation of public and private markets, rather than ‘traditional’ taxation and spending (Baldwin, Cave, & Lodge, 2011; Lodge, 2008; Majone, 2001; Moran, 2003). Within the governance structure of the regulatory state, specific institutions are provided with powers under statute to regulate particular activities and/or markets. These regulatory institutions are characterised as ‘Independent Regulatory Authorities’ and are intended to ensure that delegated powers are enacted efficiently, due to separation from political uncertainty and embedded regulatory expertise (Christensen & Lægreid, 2002; Lodge, 2008; Maggetti, Ingold, & Varone, 2013; Moran, 2003). This model of expert regulators is articulated as a contrasting model to one where politicians or citizens participate directly in decision-making.

The focus of the literature about regulation in Great Britain focuses on the institutional arrangements of a governance model referred to as the “British model” (Baldwin et al. 2010b; Robinson 2007). The British Model, originating in Britain under the Thatcher and Major Governments between 1979 and 1997, consists of the economic regulation of sectors by an agency that is separate from Government. The agency contains experts in economic regulation, primarily areas of the economy that have in the past been nationally owned and have been transferred into private ownership. These sectors of the economy, commonly the utility sectors, are privately owned but must operate within a set of rules governed by the economic regulator, also known as an Independent Regulatory Agency (IRA).

The proposed theoretical and empirical outcomes of the IRA structure, particularly in the European Union, provides the focus for the majority of the classical Regulatory Studies literature (Jordana and Levi-Faur 2004; Levi-Faur 1999; Levi-Faur and Gilad 2004; Lodge 2008; Majone 1994). This regulatory literature focuses on the economic regulation, mainly of utilities, to enhance economic efficiency and correct market failures. The focus of regulatory policy in the British Model is to create or nurture competition which, it was proposed, would ensure optimum economic outcomes (Eberlein 1999; Levi-Faur 1998). In this model, regulation is specifically limited to act as a proxy for competitive markets, with the aspiration of partially or entirely removing regulation over time, depending on the sector (Littlechild 2002). An important proposed benefit of this model was that private sector investment would be secured by the commitment of a regulatory agency to consistency of rules over time (Baldwin et al. 2010a; Ogus 2004). The British Model has been adopted by many states, leading academics to conclude that Britain is a leader in innovative approaches to regulation (Hodges and Steinholtz 2018). However, others note that the overriding concern of this model was for low

compliance costs to firms and would not necessarily lead to optimal societal outcomes (Tombs 2016; Weatherill 2007).

The second area of research from Regulatory Studies that is important for understanding how regulatory procedures could be characterised as fair, is research regarding regulatory legitimacy. Regulatory agencies are separate from elected officials who can, in principle, ensure of the rights of citizens in relation to the regulated area (Baldwin et al. 2010a, 2010b). The British Model aimed to ensure that the regulatory agency was a legitimate rule setter for an industry, by incorporating procedures of accountability of the independent regulator (Cassese 2004; Croley 1998; Ogus 2004; Pildes and Sunstein 1995; Prosser 1999). In GB this was through accountability of economic regulators to Parliament (Busuioc and Lodge 2016; Majone 1994; Scott 2000; Stirton and Lodge 2001). The extent to which economic regulators can be legitimate is summarised by Baldwin et al. (2012) who draw together regulatory theory, strategy and practice (Black 2008; Hancher and Moran 1989; Weatherill 2007) to describe five sources of legitimacy for regulators, along with some of the challenges in securing this legitimacy (Baldwin et al. 2012). These are described in Table 2.1 below.

Table 2.1 Regulatory Legitimacy
(Baldwin et al. 2012)

No.	Legitimacy Claim	Problem for Legitimacy Claim
1	Legislative mandate - Authorization from elected legislature	<ul style="list-style-type: none"> • Parliament's intention may be vague • Objectives for regulation may be in tension • Discretion of how to deliver objectives is with regulator not legislators
2	Efficiency - Legislative mandate is being implemented efficiently or efficient results are produced	<ul style="list-style-type: none"> • Problems similar to legislative mandate claims above • Measuring efficiency is difficult • Distributional questions may be left out of accounts or posed with no solutions proposed
3	Accountability - Regulator is accountable to and controlled by democratically elected representatives	<ul style="list-style-type: none"> • Question of whether trade-offs between accountability and efficiency are acceptable • Body holding regulator to account may not be properly representative
4	Due process - Procedures are sufficiently fair, accessible and open to expose the regulator to democratic influence	<ul style="list-style-type: none"> • Question of who should be allowed to participate • Question of whether there is an acceptable trade-off between openness and accessibility and efficiency • Question of whether the mode of participation is appropriate
5	Expertise - Specialized knowledge, skills and expertise have been applied in judgements made	<ul style="list-style-type: none"> • Public is poorly positioned to evaluate expertise with difficulty in explaining reasoning to lay persons • Distrust of experts • Public desire for openness and accountability • Any conflicts between experts undermines public confidence • Public scepticism of neutrality of regulatory decisions where certain parties gain advantages. This may relate to public perception of experts as self-interested or captured

As described in Table 2.1, the five sources of regulatory legitimacy are a legislative mandate for institutional efficiency, accountability procedures, respected due process and relevant specialist expertise. Baldwin et al. (2012) describe the

challenges to these sources of legitimacy in terms of a regulator's interactions with politicians and the public.

Regulatory legitimacy is analysed in empirical work within Regulatory Studies by examining the procedures of accountability, particularly, legal statutes and accountability to parliament (Cohen and Sabel 2004; Froomkin 2000; Mashaw 2006). Both legal statute and procedures related to accountability to parliament - that aim to provide oversight of regulatory activities by elected representatives - are analysed, rather than participation (Baldwin et al. 2012; Jordana and Levi-Faur 2004). Despite using terminology such as legitimacy and accountability (Koop and Lodge 2017; Levi-Faur 2011), these concepts are rarely defined or questioned. Instead, Regulatory Studies are "largely silent" on conceptual questions (Koop and Lodge 2017). Further, while the field of Regulatory Studies notes that historical and political context is vital to understand regulatory agencies (Ayres and Braithwaite 1992; Levi-Faur 2011; Lowi 1972), the way in which concepts related to this context may influence regulatory agencies is rarely explored.

A rare exception to the lack of engagement with the functioning of accountability procedures is a study by Julia Black (2008) analysing accountability of regulation across national borders. Black (2008) identifies that a key influence on legitimacy and accountability are "the values, interests, expectations, and cognitive frames of those who are perceiving or accepting the regime" (Black 2008 p. 144). However, while the context for regulatory legitimacy and accountability is noted as important, values and expectations are not analysed to understand the extent to which they may impact the outputs of the regulatory agency itself. The lack of empirical research within Regulatory Studies regarding the values that are embedded within regulatory agencies means that there is no insight in how values may support, or otherwise, participation in regulatory policy procedures.

The third area of Regulatory Studies research that can provide insight into the extent to which regulatory procedures in GB could be considered fair are those that relate to the participation of those outside the regulator. The majority of Regulatory Studies literature focuses on the participation of regulated firms in regulatory decision-making. There is a significant literature focused on the participation of privately-owned firms with economic regulators. Research on the interaction between economic regulators and regulated firms is the focus of an extensive literature regarding 'regulatory capture' (Hong and You 2018; Mulgan 2000; Uhr 1993). This is primarily described in terms of the risk that private firms will influence the regulator to provide incentives and structures in a manner which solely benefits the shareholders of one of, or a group of, firms. Considerations of regulatory capture have drawn attention to the fact that powerful interest groups frequently influence regulators and benefit from influence that regulation affords them (Ayres and Braithwaite 1992; Stigler 1971). This consideration of capture focuses on the theoretical operation of incentives within institutions that focus on economic outcomes, such as the awarding of contracts (Baldwin et al. 2010b; Jordana and Levi-Faur 2004; Roberts, Elliott, and Houghton 1991).

An additional topic related to "capture-by-firms" is the capture of regulatory institutions by the Government in institutional settings, where governance arrangements are designed in a manner to ensure the independence of regulatory institutions from political interference (Levi-Faur 2011; Roberts et al. 1991). This reflects the governance arrangements of IRAs which aim to provide consistent and predictable regulation for firms, based on economic expertise regarding the operation of a liberalized market (Baldwin et al. 2012; Ogus 2004).

However, neither capture concerns regarding firms of Government consider the way in which particular ideas might similarly 'capture' a regulatory institution. The implications of regulatory agencies being restrained by a particular way of

regulating is identified and analysed by Sunstein who describes the impact of “epistemic capture” (Sunstein 2014). Sunstein (2014) uses case studies from US regulators’ use of cost-benefit analysis to explain how influential ideas limit the range of possibilities that are investigated and implemented. Rather than capture by specific firms or organisations at a point in time, epistemic capture explains the important role of particular types of ideas within regulatory procedures. Important to analysing regulatory outcomes, researcher needs to be able to differentiate between “undue influence - perhaps in the form of epistemic capture - or a desirable form of information gathering” (Sunstein, 2014 p. 33).

The role that this type of capture might play beyond Sunstein’s (2014) investigation of the Office of Information and Regulatory Affairs in the US had yet to be applied in any other country or regulatory agency at the time of writing. While research in Regulatory Studies had yet to analyse the impact of the role that ‘epistemic capture’ could play in GB regulatory policy development, the ideas that were most likely to be influential in GB economic regulation had been clearly identified. The framework of economic regulation of energy is from the field of economics and this may preclude the regulatory institutions from a focus on topics related to affordability.

Rare consideration of participation in regulatory procedures, beyond considering regulated firms, can be found in two studies that focus on the consideration of ‘regulatory participation’ of citizens in housing regulation (Haber 2015) and water regulation (Haber and Heims 2016). Regulatory participation in England and Sweden was described as impacting the interventions of regulators on behalf of vulnerable communities in society (Haber 2015; Haber and Heims 2016). However, while Haber and Lodge (2015) and Haber and Heims (2016) identified a novel way of working in particular regulatory agencies where regulators engage with citizens, the field had yet to extend these findings into sectors beyond housing and water.

In the preceding section, three areas of regulatory studies are described as providing insight that was useful to understanding the extent to which regulatory policy in GB could be considered as fair. These are the institutional arrangements of Independent Regulatory Agencies within the British Model of economic regulation, the basis of legitimate regulation in accountability procedures and legal status, and finally the participation of citizens and regulated firms in regulatory procedures. While the research described in this section provided a useful foundation, there remained significant gaps.

GB energy regulation is the topic of a historic description of the implementation of the British Model to trace energy supply from direct management of a public service to policies of market creation (Helm, 2004; Pollitt, 2012; Wright, 2007). However, this institutional design in terms of regulatory policy making has implications. In particular, the implications of the institutions of the British Model of economic regulation are that the economic regulator focuses on the economic logics of market participants and market outcomes. With an economic focus on the people who use electricity and gas, people are understood as rational purchasing consumers (Deller and Vantaggiato 2014; Mantzari and Ioannidou 2019). Research had yet to explore the implications for regulatory legitimacy of a shift from citizen to consumer. Instead, the sole focus of concern was that the neutrality of structures seeking to embed economic experts might be overestimated (Baldwin et al. 2012; Bishop, Kay, and Mayer 1994; Ogas 2004).

Research from Regulatory Studies also provided indicative experience for the analysis of governance structures, including regulatory agencies (Baldwin et al. 2012; Levi-Faur 2011). Further, it provided a foundation for the exploration of the possible impact of economic regulation as a source of policies that focus on markets that have implications for people in their homes (Haber 2015; Haber and Heims 2016). However, research from Regulatory Studies had yet to analyse the extent to

which regulation could be conceptualised as inequitable or unfair. As described in Chapter 1, inequitable outcomes of energy regulation were posed as a challenge for fair energy prices in GB. While this had yet to be the focus within Regulatory Studies, inequalities regarding the outcomes of policies regarding affordability of energy was a focus within Energy Justice research.

2.3 Energy Justice

Regulatory Studies provided the study with important insights into the role of economic regulators broadly and Ofgem specifically. However, it had yet to consider the role of fairness in energy regulation or extend empirical research into understanding how fairness might relate to regulatory legitimacy. As a consequence, this thesis also drew on the insights from research into Energy Justice research, which directly engages with concerns relating to fairness within energy policies in terms of the outcomes for people who need energy services (Heffron and McCauley 2017; K. Jenkins et al. 2018; Sovacool 2013).

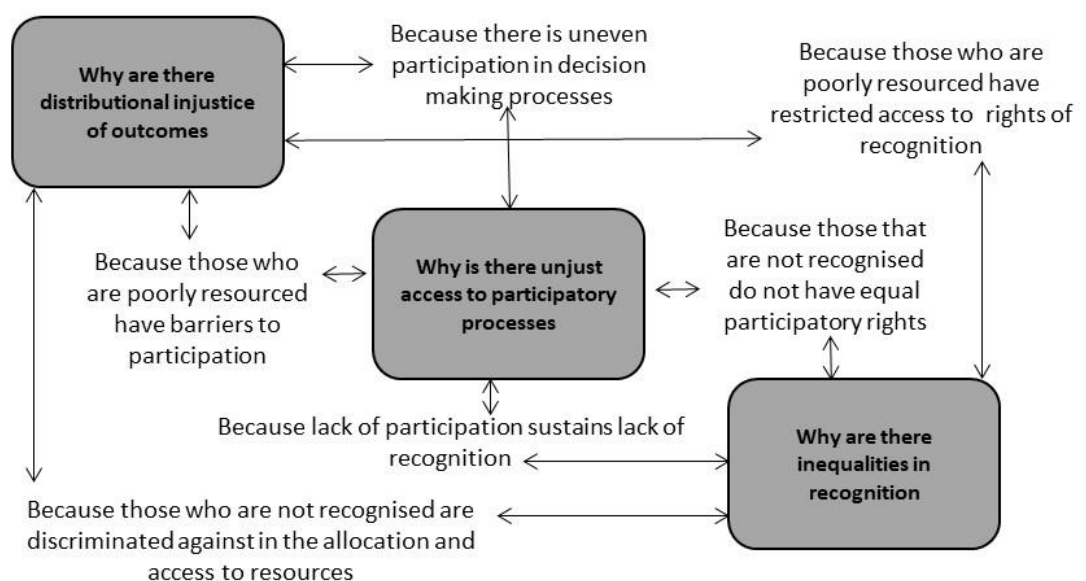
Energy Justice research focuses on the “just-ness” of energy policy procedures and outcomes, drawing upon two key arenas of normative research: the philosophical discussions of justice in society and the longstanding application of these philosophical discussions to issues regarding environmental policy (Heffron and McCauley 2017; Sovacool 2013; Sovacool et al. 2016; Sovacool and Dworkin 2015a). Energy Justice aims to provide an analytical framework for research to identify and reveal the values implicit in energy systems as they exist. This then enables decision-making regarding the transformation of energy systems based on positive ethical procedures and outcomes.

Energy Justice is based on the more longer standing and wider ranging field of Environmental Justice research, which focuses on three concerns regarding injustice: distribution, recognition and procedures (Bickerstaff et al. 2013;

Schlosberg 2009, 2013; Schlosberg and Collins 2014). Distribution focuses on the way in which environmental hazards impact some groups but not others. Recognition concerns the way in which some groups, particularly along racial or ethnic lines, are excluded from the evaluation of the impacts of environmental hazards. Procedures involve the information that is available regarding environmental hazards, the availability of redress available for those they impact and the extent to which decision-making is unbiased and accessible (Goldthau and Sovacool 2012; Hunold and Young 1998; Walker 2012).

These three types of injustice do not stand alone but can cause and reinforce one another, with those whose needs are already respected in society being more likely to have their needs recognised and acted upon through the redistribution of resources (Schlosberg 2009; Sovacool and Dworkin 2015a; Walker 2012). The implications from the findings of Environmental Justice research are explained by Schlosberg (2009) using the diagram reproduced below in Figure 2.1.

Figure 2.1 Schlosberg Interactions of Environmental Injustice
(Reproduced from Schlosberg, 2009)



In the diagram above, each of the three pillars of environmental injustice - distribution, participation and recognition - are captured in the shaded boxes. The diagram identifies specific causes of environmental injustice (Schlosberg 2009; Walker 2012). The reasons for injustice (statements beginning with “Because”) have an effect on the pillars of injustice (represented with arrows). It explains that distributional injustice can lead to discrimination in the allocation of resources. This limits the resources that some groups have that could ensure that their rights are recognised. This in turn means that unrecognised groups can face barriers to participating in policy procedures that relate to decisions in Environmental Policy. The participation in procedures that is required under procedural justice are therefore undermined by inequalities of participation in decision-making procedures. This in turn means that the chance to correct distributional inequalities is limited due to a lack of participation of particular groups.

While Energy Justice research adopts much of the framework used in Environmental Justice research, it proposes two significant adaptations (K. Jenkins et al. 2018; McCauley et al. 2013). Firstly, it proposes that Energy Justice research should be practically minded, specifically seeking to engage with and be used by decision makers. Secondly, it proposes adaptations to distribution, recognition and procedural justice concerns to a focus on the energy system specifically. Energy Justice research therefore has “the intention that energy justice can exist as a solution-based framework that not only characterises injustices but can also help tackle them” (Jenkins and Martiskainen 2018, p.38). Energy Justice and Environmental Justice are distinct but the interaction of distributional, recognition and procedural injustice hold in both fields of research (Bouzarovski and Simcock 2017; K. Jenkins et al. 2018; Sovacool and Dworkin 2015a).

While some research incorporates recognition justice themes in concerns regarding procedural justice, the majority of contemporary Energy Justice research accepts

the centrality of recognition of all in analysing justice and therefore articulates findings in line with Jenkins et al. (2016) in that their analysis seeks to reveal distributional, procedural and recognition injustice .

Energy Justice research adopts the structure of justice concerns as articulated in Environmental Justice and explores three “pillars” of justice: distribution, recognition and procedures (Sovacool 2013; Sovacool et al. 2016; Sovacool and Dworkin 2015a). Building on the insights and experience of empirical work in environmental justice (Schlosberg 2009; Walker 2012) and ethical considerations of the impact of energy policies (Sovacool 2013; Sovacool and Dworkin 2015a), a framework of questions can be applied to different contexts, countries and historic periods to reveal injustices (Jenkins, McCauley, and Forman 2017; Sovacool et al. 2017).

The first pillar of the energy justice framework is *distributional* justice. This focuses on identifying the way that energy resources and energy-related sources of harm are distributed within society, connected to the whole energy system (Heffron and McCauley 2017; Jenkins, Middlemiss, and Pharoah 2011). Distributional justice, both in energy policy and beyond, is traditionally the focus of social policy (Jenkins et al. 2017; Snell et al. 2015). Distributional justice concerns are the focus of policies regarding the provision of income to provide a safety net for particular demographics of individuals through the benefits system. In GB these policies were developed initially through primary legislation in Parliament with detailed formulation commonly sitting with the Department of Work and Pensions (DWP). Distributional policies in GB were formulated, implemented and delivered predominantly at the UK level at Westminster.

However, the affordability of energy to people in their homes is affected by regulatory policy as well as the traditional arenas of social policy. The explicit

policies of distribution with regard to affordable energy in GB relates to the distribution of funds committed to ensuring particular groups have access to energy services; in particular, the policies that distribute funds to keep people warm in their homes (Simcock et al. 2016b). The role of the GB energy regulator and regulated firms in delivering these funds is described in Chapter 1. However, at the time of writing, there had yet to be research which describes the implications of the existing delivery mechanism of these schemes, i.e. regulated firms, on considerations of energy justice.

The second pillar of the energy justice framework is *recognition* justice.

Recognition justice concerns highlight the importance of respecting the different needs of communities and individuals (Honneth 1996; Jenkins et al. 2014; Young 2011). Recognition is conceptualised as central to justice concerns due to the concern that groups can be stigmatised and excluded. In particular, low income groups can be stigmatised to justify situations of material deprivation (Bouzarovski 2018; Snell et al. 2015). In this study, the most significant foundation for energy recognition justice was derived from the environmental and social justice analysis in the work of Nancy Fraser. Fraser (1998) argued that recognition justice analysis involves assessing the ways in which institutional power hierarchies and cultural norms stop policy procedures from granting all citizens equal respect. Central to Fraser's proposals are two conditions for recognition justice. First, there must be equality of participation based on economic equality. Economic inequality between citizens will mean that they do not have equal recognition in policy procedures. Second, implicit institutional assumptions that "systemically depreciate some categories of people and the qualities associated with them" (Fraser 1995, p. 36) must be identified and removed. Importantly, these two dimensions of justice are not necessarily causal or necessarily separable. Rather, individual cases must be examined to review their interplay in particular institutional settings at particular

points in history to identify possible causes of recognition injustice related to either or indeed both. Frasers' work set ambitious goals with a high bar for recognition justice in regulatory policy formulation. Both economic equality and embedded institutional assumptions are far broader issues than a single utility regulator. However, the energy justice framework that incorporates Fraser's theoretical contribution (Fraser 1995) provided this study with an important lens to analyse concerns regarding recognition justice.

Recognition injustice within the energy justice framework focuses on the energy implications of this theory. Rather than broader participation in society, the focus is on the specific goals of universal access to affordable, sustainable energy (Bickerstaff et al. 2013; Heffron and McCauley 2017; Jenkins et al. 2011; McCauley et al. 2013). This is in line with McCauley et al. (2013) who describe how ways of recognizing the vulnerability of misrepresented and under-represented people are required in the study of energy justice. While vulnerability is a single aspect of recognition, it is central to understanding regulatory policy formulation in GB. This element of research is strongly associated with the evolution of energy justice concerns with environmental justice. For example, this particularly explains the unequal burden on particular communities in relation to highly polluting infrastructure. When considering the injustices of recognition, the needs of communities and individuals therefore need to be understood, articulated and actioned. In the context of energy services in the home, these different needs are connected to the variations between people with regards to the heating, lighting and cooling required for wellbeing. In the context of GB energy policy, these needs have been most frequently articulated as those of particular demographic groups. Hurlbert and Rayner (2018) investigated recognition justice in the context of Canadian energy justice for Aboriginal people (Hurlbert and Rayner 2018). In their study they found that following legal procedures to support parity of participation

does not deliver recognition justice. This is because there is inequitable recognition of Aboriginal peoples. Being provided with an opportunity to participate was insufficient to ensure that Aboriginal people were treated as equal citizens with policy procedures, despite the opportunities to contribute to the procedures themselves.

The cases explored in Energy Justice research, such as this Canadian one, reveal that recognition injustice varies enormously across elements of the energy system and geographical location. One element of consistency across the cases, though, is the manner in which recognition injustice is identified.

Firstly, there is consideration of the needs of individuals, communities and groups affected by an energy related decision. Researchers identify what steps are taken to understand the needs of effected groups. However, identifying and understanding energy related needs is insufficient for energy justice (Simcock et al. 2016b; Walker 2012). Secondly, action needs to be taken to ensure that any identified inequalities or specific needs are understood and acted upon. The procedures of action then make up the third and final pillar of energy justice: procedural justice.

Procedural justice relates to the procedures that are undertaken to distribute the benefits and costs associated with energy. Specifically, Procedural justice is the description within Energy Justice research for just inclusion in the procedures of developing and delivering policies at all levels. Decision-making regarding energy operates at a variety of different governance levels that vary by case. For example, the institutional design of individual countries will vary globally. Further, even within a particular country there may be different institutions and organisations that consider different elements of the energy system (Jenkins et al. 2014). For example, decision-making about the location of infrastructure commonly varies

significantly from decision-making regarding allocation of funding to households and market design (K. E. Jenkins et al. 2018; Walker 2012; Walker and Devine-Wright 2008) . The commonality across the complexities of different cases of procedural justice is a concern about equitable participation within decision making.

Reflecting the complexity of the different possible routes for procedures of policy, procedural justice has been further broken down into three measures: access to information, access to meaningful participation in decision making procedures and access to legal procedures for redress or to challenge the decision-making (Heffron and McCauley 2017; Jenkins et al. 2014; McCauley et al. 2013). Access to information includes information regarding the opportunities to engage in policy procedures and any relevant information about the policy impact, for example, the transparent publication of statistics related to the problem a policy seeks to solve and any data used to predict the future impact of a policy. This information is central to procedural justice because it provides the opportunity for existing policies or possible requirements of policy to be explained by those who are not already part of the institutional decision-making (Agyeman, 2013; Simcock, 2016). The second measure of access to legal procedures is the right to challenge outcomes and receive redress if policy outcomes are not just. This includes legal rights to participate in procedures of decision-making as they occur and then procedures to challenge the decisions made. These challenges are most regularly the focus of legal procedures (Heffron and McCauley 2017; McCauley et al. 2013). However, a notable feature of energy markets is the presence of alternative dispute mechanisms (ADR) whereby organisations provide mediation to investigate and make decisions regarding concerns (Baldwin et al. 2010b; Mantzari and Ioannidou 2019; Ogun 2004). In the majority of European Union countries, including GB, these are Ombudsmen. The third measure of procedural justice is meaningful participation. This element of procedural justice has been the focus of the majority

of research regarding procedural justice within Energy Justice research, due to the enduring debates regarding the extent to which particular types of participation can be confidently proposed as “meaningful” (Bickerstaff et al. 2013; Simcock et al. 2016b; Walker and Devine-Wright 2008).

Before this thesis, the Energy Justice framework had not been applied to the regulatory policies of Ofgem between 2000 and 2016. However, it had been applied to affordable energy policies in Great Britain. In GB Energy Policy, an adaptation was proposed to apply the Environmental Justice interaction frame described in Figure 2.1 to affordable energy policy in UK (Schlosberg 2009).

The seminal article by Walker and Day (2012) identified how the interaction of injustice took place in the Government policy area of fuel poverty. ‘Fuel Poverty’ is a concept that is separate from poverty and was developed in the UK to describe the inability of particular households to afford energy (Boardman 2013; Isherwood and Hancock 1979). A household is identified as being ‘in fuel poverty’ if their spend on energy to heat and light the home exceeds 10% of income. This definition of ‘fuel poverty’ was adopted across the EU and was maintained in the UK, with the exception of England, from 2010 onwards (Department of Energy and Climate Change 2015a; Mould and Baker 2017).

In their study, Walker and Day (2012) analyse experiences of fuel poverty advocacy and policy development to argue for the extension of concerns of injustice from the inequalities of distributional outcomes. Walker and Day (2012) describe an unequal distribution of three factors, arguing that households cannot, in practice, secure warmth due to these different distributional inequalities: inequality of income, inequality of price levels and inequalities of housing fabric.

In addition to the distributional injustices, UK fuel poverty policy led to recognition of diverse needs because fuel poverty has different consequences for different

types of demographic groups. Their focus on recognition injustices relates to the failures of powerful policy actors to “accord some groups of people equal respect and equal rights as others” (Walker and Day 2012, p. 71). The elderly have higher energy needs related to affordable warmth but have, in some UK policies, had this need recognised. However, they conclude that this is unlikely to be the case for all groups in need of affordable energy in their home. Walker and Day (2012) apply their insight to interaction of injustices described by Schlosberg and is reproduced here in Figure 2.2.

Figure 2.2 Interacting Injustice of UK Fuel Poverty Policy

Reproduced from Walker and Day, 2012

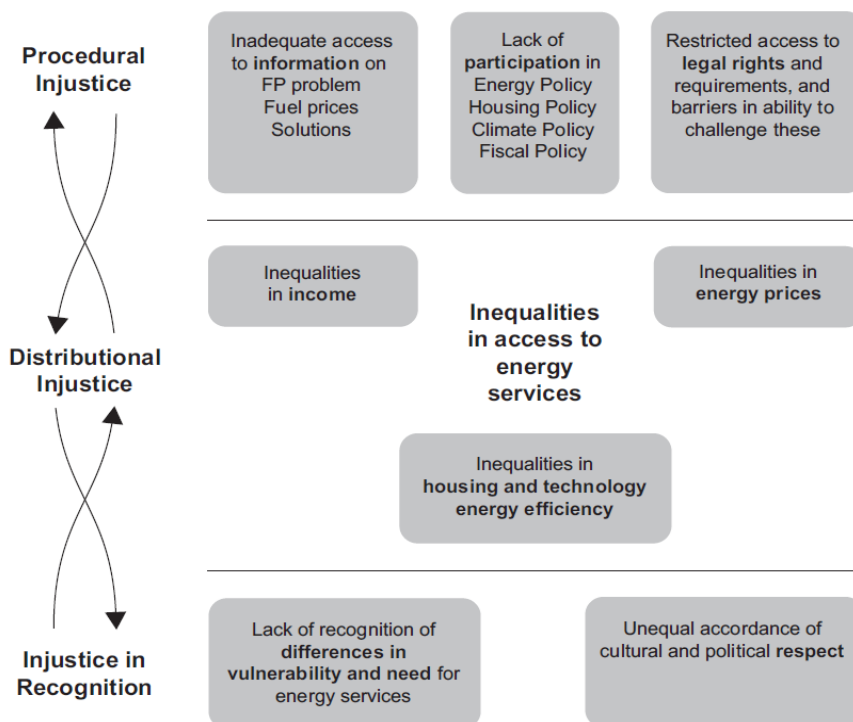


Figure 2.2 explains the interaction of procedural, distributional and recognition injustice, resulting in inequalities in access to energy services. Distributional injustice applies the UK Government’s definition of fuel poverty at the time and concludes that fuel poverty is an injustice of income, energy price and energy efficiency. Walker and Day (2012) conclude that there are injustices of recognition

related to unequal accordance of respect and a lack of recognition of differential needs for energy services. Finally, their framework focuses on procedural injustices regarding Government policy and institutions of Government. This insight has the foundation for understanding that identification as “fuel poor” or “eligible” for an assistance scheme can occur in a more or less just manner (Simcock et al. 2016b; Snell et al. 2014, 2015).

Subsequent research since 2012 regarding issues connected to fuel poverty poses two important challenges to this articulation of the interactions of recognition, distributional and procedural justice. The first limitation of existing applications of Walker and Day’s (2012) adaption of the interaction of injustice from Environmental Justice is that it is limited in its engagement with the broader governance structures that impact fuel poverty and affordable energy. Specifically, it excludes consideration of the regulatory institutions that have an influence on energy prices, which, in turn, impact the policies related to fuel poverty. The second limitation of Walker and Day (2012) is that this model adopts the frame of inequalities in access to energy services as the three areas of fuel poverty policy in the UK - income, energy efficiency and energy prices. This focus on only three factors has been challenged for omitting the far broader range of factors that make up the lived experience of unequal access to energy services. This is due to the specific way of defining fuel poverty in the UK underpinned by statute (Warm Homes and Energy Conservation Act, 2000). While the definition used by Walker and Day (2012) reflects early academic work in the field of fuel poverty (Boardman, 2013; Isherwood and Hancock, 1979), contemporary studies have challenged the fuel poverty label as a useful one for describing unaffordable energy in the home. “Fuel Poverty” is argued to be limited in practice and has neared theoretical obsolescence (Bouzarovski and Petrova 2015; Day, Walker, and Simcock 2016). Instead, lived experience of limited access to energy must include access to

affordable energy and energy infrastructure. The application of this broader concept is intended to incorporate the social practices of households using energy. The term proposed to capture this broad conceptualisation is energy service poverty.

Within the Fuel Poverty literature, these differences in definition are debated and tested in terms of practical delivery of government led programmes for carbon savings and income maximisation. The programmes focused on analysis of economic and engineering models of energy use on a technical rather than societal or political level. Contemporary research proposes that this technical focus risks a depoliticised and technical debate that fails to provide a platform for a needed debate on which groups in society have access to support from “Fuel Poverty” alleviation policies (Middlemiss and Gillard 2015; Simcock et al. 2016b). Specifically, research regarding low income families with children and disabled households to policy and programmes suggests that these groups are unjustly excluded (Middlemiss 2017; Snell et al. 2015). Responding to the existing policy frame may incorporate the injustices of a limited frame embedded within that Government program (Simcock et al. 2016b; Thomson, Snell, and Liddell 2016).

The implications of a specific definition are analysed by Middlemiss (2017) who identifies the consequences of the introduction of a new definition of Fuel Poverty in England in 2011. The shift in definition did pose a significant reduction in the overall level and the specific groups that made up households in fuel poverty in England. This analysis explains both the explicit change in fuel poverty definition within residential energy policy but also the implicit changes in the scale of the commitment of policy actors (from eradication to a condition that can only be alleviated) and the adoption of the broader discourse of the Coalition Government (2010-2015) of ‘austerity’, through targeting a far more specific group of ‘most’ in need (Gillard et al. 2017; Middlemiss 2017).

While the adoption of one term or another in academic discourses may engage with a similar if not identical concern about the injustice of excluding some from affordable, sustainable energy, this ongoing debate regarding definitions explains an important consideration for recognition justice. Further research is therefore required to analyse to what extent the Energy Justice framework of interacting injustice is fit for purpose with contemporary understandings of the significant limitation of the frame of 'fuel poverty' in the existing institutional setting (including that of the original authors, Gordon Walker and Rosie Day).

The two limitations of Walker and Day (2012) - the adoption of the traditional fuel poverty frame and the narrow focus on government policy procedures - have been unevenly explored by subsequent research. As described above, the limitation regarding the adoption of the fuel poverty frame as defined within UK policy is the focus of existing research (Simcock et al. 2016a; Snell et al. 2015; Thomson et al. 2016). However, the limitation a focus solely on UK Government policy has yet to be analysed.

A focus on Government policy in understanding the possible injustices of unaffordable energy for people in their home could be a significant shortcoming for two reasons. Firstly, it excludes consideration of the regulatory agencies. As described in section 2.2, these institutions have had a significant role in the UK and their exclusion from analysis is likely to provide only a partial view of policy outcomes regarding the injustice of unaffordable energy.

The limitations of analysis that does not engage with the key institutions regarding energy policy is likely to have important implications for understanding any unjust outcomes of policy. This is because procedural and recognition justice analysis specifically set out to reveal the inequalities that play out within procedures that, in the UK, play out within regulatory institutions. The possible implications for a

particular institution impacting the procedures and outcomes related to a policy, have been analysed by existing research and are described in the section below.

2.4 How Energy Institutions “Know” Consumers

Understanding how procedures occur within institutions that are developing and implementing energy policies provides insight into how those policies are shaped by the implicit assumptions of that specific institution (Cotton and Devine-Wright 2012; Kuzemko 2014; Shove 1997; Shove and Walker 2014). Within the field of Energy Studies, research explains how these implicit assumptions are embedded and replicated in particular ways of understanding, or ‘knowledges’, regarding energy and the people who use energy (Devine-Wright 2007; Shove 1997). An important underpinning assumption regarding ‘knowledges’ in policy making is that there is no single ‘correct’ way in which something could or should be understood. Instead, there are competing perspectives which are more or less likely to be used in forming a particular way of knowing (Fischer et al., 2015; Strassheim, 2015).

Research regarding ‘knowledges’ explains the important role that the embedded nature of specific knowledges plays in prioritising particular types of knowledge and associated ‘experts’ (Nilsson et al. 2008; Nowotny 2003). Particularly relevant are the considerations of the institutional adoption of particular expectations regarding what is ‘useable’ knowledge within a policy arena (Boswell 2008; Weiss 1979). The types of ‘knowledges’ with their associated ‘experts’ then influence the acceptable policy institutions policy instruments (Geddes and Sullivan 2011; Hay 2002). The prioritisation therefore impacts the form and focus of policy and its resulting legislation and regulations (Frerichs 2011; Rischkowsky and Döring 2008).

The way in which institutions have particular implicit assumptions associated with a particular sets of knowledges has important implications for the way in which

policies are developed in terms of their outcomes. This includes a key consideration of how particular individuals and groups are conceptualised and ‘targeted’ (Ingram & Schneider, 2015). Ingram and Schneider (2005) probe how particular ways of conceptualising and representing certain populations as ‘deserving’ or ‘undeserving’ impact policies. This approach to policy research explains that policy narratives incorporate implicit and explicit understandings of a diverse range of values - from high level beliefs about the role of government in society to detailed definitions characterizing particular groups or individuals. This raises the important concern that the prioritisation of specific types of expertise can lead to undemocratic values being embedded in policy-making procedures (Ingram & Schneider, 2015; Strassheim & Kettunen, 2014).

A rare study of decision-making at Ofgem identifies that the values associated with the economic focus of Ofgem does have implications for the types of topics that they engage with regarding affordable energy. In their study of Ofgem’s response to carbon reduction policies, Scrase and Ockwell (2010) describe how the manner in which regulatory policy problems were understood led to solutions focused solely on competitive procedures. This focus resulted in regulatory policies that attempted deliver efficient prices and failed to engage with discussions about unaffordable energy being associated with cold weather-related deaths (Scrase and Ockwell 2010).

In addition to the consideration of how implicit assumptions may influence the extent to which institutions engage, or fail to engage, with particular topics of policy, further case studies from Energy Studies describe the implications that these embedded implicit assumptions may have for the influence of particular concepts. The manner in which people are conceptualised in energy policy development and the implication for policy decisions, has been described focusing solely on people as ‘consumers’ within energy policy, and include assumptions about a desirable level

of interaction with the market (Berg and Gornitzka 2012; Devine-Wright 2007; Wilhite et al. 2000). This conceptualization of consumers as having a desirable level of market interaction results in a dominant concept of consumers in terms of ‘deficits’ in understanding and / or behaviour (Catney et al. 2014; Devine-Wright 2007). With regards to energy policies developed by GB institutions, this resulted in “...a social representation of the ‘energy public’ that is overwhelmingly characterized by deficits: of interests, knowledge, rationality and environmental and social responsibility” (Devine-Wright, 2007, p69). Thus, institutions that coordinate procedures of policy development implicitly adopt the assumption that individuals who are given ‘better’ information and ‘appropriate’ incentives will change their behaviour and act in a manner consistent with environmental policy aims (Devine-Wright 2007, Hargreaves 2011, Shove and Walker 2014). For example, the UK government department responsible for environmental policy, DEFRA, had an understanding of behaviour of individuals as being characterised by “rational self-interest, attitude/motivation or habit” (Shove, 2012, p2).

The analysis of how this understanding of ‘consumers’ characterised by ‘deficits’ identifies an important impact on how and when ‘non-industry affiliated groups and individuals’ are involved (if at all) in policy regarding the development and planning of energy networks. The conceptualisation of people as ‘consumers’ and ‘customers’ is expressed negatively as:

“...either expressing an absence of ability or interest, or by being conditional or bounded by effort, time, location, resources or degree of social influence. They conceived “people” as lacking interest, care, action, time, knowledge or understanding and hence were outside or “other” to members within the electricity industry.” (Cotton and Devine-Wright, 2012, p12)

Instead, ‘technical experts’ from within industry provide information to specific groups or subgroups of ‘the public’ at points in time selected by institutional bodies as set in statute (such as in Planning Regulations). Policy development and implementation regarding networks, therefore, is constrained in the manner and timing of those outside of the industry by specific understandings of ‘relevant’ perspectives. In the example of decision-making regarding electricity networks, there is an important implication as to how people are conceptualised in terms of how they are able to participate. The way that these experts conceptualize consumers is key because of the manner in which some can use their strategic role to transform or reinforce particular types of policy debates (Strassheim, Jung, and Korinek 2015).

The concern regarding participation is considered in terms of the provision of opportunity to meaningfully participate in procedures in a non-discriminatory way (Chilvers 2010; Lovell 2007; Schlosberg 2009). In the UK there were procedures to include comments from members of the public and other interested parties as decisions were made regarding multiple elements of the energy system (Devine-Wright 2007; Sovacool 2013; Walker and Devine-Wright 2008). However, the procedures aiming to include the public were criticised for being limited in their timeliness and creating a further set of barriers to participation in bounding what was an ‘official’ and acceptable way of participating and what was not (Chilvers and Longhurst 2016; Pallett and Chilvers 2013).

While this literature engages directly with ways of knowing people, it had not, to date, engaged with how this relates to procedural or recognition justice concerns, despite a shared concern with inclusive energy policy development. Insight regarding the role that knowledges play in shaping procedures of policy development provided important insight for this thesis into the way in which particular experts and included (or not) and the implications that this might have

on how people who use energy are understood. As inclusive policy procedures are an important factor in the legitimacy of regulatory institutions, analysing ways of knowing consumers could provide insight to address the issues explored in this thesis by explaining the extent that Ofgem could be said to have had inclusive and therefore legitimate policy development procedures.

2.5 Implications of Knowing Consumers in Regulation

In this literature review I have described the existing research that provided partial insights into whether or not energy market regulation in GB between 2000 and 2016 was just. Existing research that focuses specifically on regulators as institutions, i.e. Regulatory Studies, articulates justice concerns as regulatory legitimacy. Regulatory legitimacy is articulated as important but rarely researched empirically. Research from as early as Baldwin et al. (1998), has highlighted its importance and the vital need for a future research agenda to focus on questions of “the language, culture and consequence of regulation” (Baldwin et al., p. 40). However, academic research that responds to such questions was rare when this study was carried out and did not engage with electricity or gas regulation, despite the prominence of regulatory analysis of these sectors in Regulatory Studies (Cafaggi and Pistor 2015; Pérez-Arriaga 2014).

Beyond the research conducted in the field of Regulatory Studies, analysis of energy policy decision-making provided an alternative foundation of literature in Energy Studies. Research regarding the implications of how people who use energy are understood by those making policy, explains the importance of embedded implicit assumptions in understanding what kind of policies are seen as “possible, plausible or worthwhile” (Shove 2012, p. 2).

Research described in section 2.4 concerns the influence of the concept of ‘consumers’ in some spheres of energy policy-making. This body of research shows

that the most influential way of understanding people who use energy in their homes is that of a 'consumer' and that this embeds an assumption of deficits in understanding of energy. No research attempted to identify whether the same held true for Ofgem. This is particularly important for research within Regulatory Studies where the characterisation of 'consumers' is taken for granted. If people in their homes were predominantly conceptualised as 'consumers', the case findings from Section 2.4 suggest that the implications of institutional embedded implicit assumptions regarding 'consumers' is likely to reveal limits to participation in decision-making. The implications of these limits to is in providing an important insight into how procedural justice might be undermined. This in turn is likely to have implications for distributional and recognition justice as well as regulatory legitimacy.

If implicit embedded assumptions within procedures do have the effect observed in other energy institutions of reducing the ability of citizens to participate equally in procedures, this would have an impact on whether these procedures were just. This in turn would have important implications for the legitimacy of the regulator.

Further, embedded implicit assumptions could have an important effect on regulatory outcomes. Sunstein's observation of 'epistemic capture' within some regulatory procedures in the US, describes a risk to regulatory legitimacy if the effects of powerful ideas within regulatory institutions are not acknowledged (Sunstein 2014). The implications of Sunstein's results are particularly concerning considering the finding within Energy Studies that the way that experts conceptualize consumers is key because of the manner in which some can use their strategic role to transform or reinforce particular types of policy debates (Strassheim and Kettunen 2014).

New analysis is therefore needed to explain whether unjust regulatory policy formulation in GB undermines regulatory legitimacy. This requires direct engagement with the operation and outputs of regulatory institutions within GB and identification of the embedded implicit assumptions that shape them. This thesis therefore investigated the extent to which regulatory policy formulation was affected by the way in which people who use energy in their homes were understood. Specifically, it will pose the question “What role did knowledges of ‘consumers’ play in the formulation of GB energy market regulation between 2000 and 2016?”.

Chapter 3 - Research Strategy & Methodology

3.1 Introduction

In this chapter, I explain the methodology I used to answer the question ““What role did knowledges of ‘consumers’ play in the formulation of GB energy market regulation between 2000 and 2016?”. In the sections below, I explain the detail of my methodological choices and their application. First, I identify how regulatory decision-making functioned in this period. What decisions were made? Who made them and where? This provided the foundation to identify the knowledges that were visible in publications of regulatory procedures. Previous research, as I explained in Chapter 2, found that describing the procedures used by decision makers would not be sufficient, because the embedded assumptions within institutions could limit the role of some knowledges and prioritise others (Cotton and Devine-Wright 2012; Shove 1997; Simcock and Walker 2015). To identify and analyse the role of knowledges within regulatory procedures, I therefore selected three frameworks to reveal institutional assumptions within procedures and their implications for policy outcomes.

First, the Energy Justice framework (EJF) was chosen to reveal the extent to which knowledges of energy needs were acknowledged by regulatory policy makers in their decisions and the extent to which procedures included diverse insights regarding energy needs. Second, the Tools of Policy Formulation (TPF) framework traces the role of knowledges in the tools used by regulators to make policy, explaining *how* different knowledges play a role. Third, the What is the Problem Represented to be (WPR) framework exposes the implicit assumptions that explain *why* particular knowledges play a specific role in regulatory policy procedures. Each individual framework poses a series of questions which cumulatively provide insight into the role of knowledges within regulatory procedures. This novel combination of

three contemporary analytic frameworks enabled me to build insight through an iterative approach, uncovering important features of regulatory procedures not visible through analysis using a single framework. The insights available to future researchers from combining these three frameworks are explained in Chapter 8.

Each of these frameworks requires insight into the detailed operation of regulatory procedures. I therefore produced this detailed insight by building a corpus of publicly available documents related to regulatory policymaking and transcripts of elite interviews that I conducted for this thesis. I then used documentary analysis, process tracing, thematic analysis of the corpus I built, to respond to questions posed by all three frameworks. However, this did not reveal sufficient detail of *how* and *why* some knowledges played a more prominent role than others. For a subset of questions in the TPF and WPR frameworks I also conducted qualitative content analysis in the manner explained in section 3.3.

In summary, this chapter explains how each framework reveals important features of energy market regulation procedures that impact the roles that different knowledges of consumers played between 2000 and 2016. Having described the three frameworks that guided my analysis, I explain the data collection and analysis I undertook to answer my research question.

3.2 Frameworks

To reveal the role of different knowledges within regulatory policy procedures, I adopted three frameworks. In Chapter 2, my literature review identified that the role of different knowledges might have important implications for due procedure concerns in regulation and a concern with the fairness of outcomes of energy policies embedded within the contemporary multi-disciplinary field of Energy Justice. As I explained in Chapter 2, Energy Justice research aims to understand the

extent to which UK energy policy can be said to be just or unjust. Research in this field has addressed this by identifying the distributional, recognition and procedural justice implications associated with a particular energy policy or group of policies identified for analysis (K. E. Jenkins et al. 2018; Simcock, Walker, and Day 2016c; Sovacool et al. 2019). However, while this framework prompts analysis that can reveal injustices of procedures and recognition, it does not follow that this analysis will reveal *why* these injustices exist or *how* these injustices function. I therefore used two further frameworks to reveal how and why injustices occurred in regulatory policymaking between 2000 and 2016.

Analysis that specifically engages with the way that policy-making procedures function, including the extent to which they recognise citizens to a greater or lesser extent, is the focus of policy studies (Burnham et al. 2008; Fischer et al. 2015; Schneider and Ingram 1993; Wodak and Meyer 2015). The theory and methods of policy analysis have been applied to energy policy but not to a great extent (Hoppe, Coenen, and van den Berg 2016; Sovacool 2014) However, Hoppe et al. (2016) note the urgent need for energy research to move beyond the traditional focus on economic oriented research and engineering evaluation, due to the transformations in societies needed to respond to the challenges of climate change (Hoppe et al. 2016). They go on to argue that the theory and methods from policy studies are currently untapped but provide an important foundation on which to base studies that seek to understand policy procedures and their outcomes.

Policy studies can contribute to understanding procedural and recognition justice by explaining the meaning making that affects the outcomes of policy procedures (Bacchi 2000; Fischer et al. 2015; Haas 2004). Policy studies incorporate an understanding that the meaning making occurring in policy procedures identifies limits on how people are 'known' in policy, building on the school of thought that holds that policy does not take a rationalistic path from 'problem' to 'solution'

(Bacchi 2009b; Fischer et al. 2015). Instead, areas of policy focus can be known in a wide range of ways; that is, there are competing ‘knowledges’ (Boswell 2008; Weiss 1979). As not all ‘knowledges’ have equal influence in policy procedures (Haas 2004; Nowotny 2003), so identifying which types of knowledges are accepted as ‘expertise’ within particular debates, is key (Boswell 2009; Devine-Wright 2005b; Dunlop 2010). This is because the knowledges that are accepted as credible, salient and legitimate, have access to, and influence over, policy (Boswell 2008; Cash et al. 2003; Shove 1997). This perspective from policy studies includes incorporating an understanding of how ways of knowing about ‘policy problems’ and of ‘relevant solutions’ came about historically and the role of existing contexts and coherence with traditions (Bevir and Rhodes 2003; Hay 2002; Marsh and Stoker 2002).

In order to identify the role that knowledges of consumers play in the formulation of energy market regulation, I therefore adopted two frameworks from policy studies which provide a way to make visible the implicit assumptions in policy regarding the way problems are characterised and represented: “What is the Problem Represented to Be” (Bacchi 2009b) and “Tools of Policy Formulation” (Jordan and Turnpenny 2015). These, in turn, explain *how* and *why* policy procedures function (Bacchi 2009a; Jordan and Turnpenny 2015). These two frameworks from policy studies are explained in the sections below along with how I applied the Energy Justice framework.

3.2.1 Tools of Policy Formulation

In Chapter 1, I explained that the systems of energy regulation in Great Britain did not occur spontaneously but were instead designed and implemented in order to achieve a set of expected benefits: that competitive markets would result in energy prices that were lower than would otherwise be the case, while maintaining

investment in the energy system from private firms (Helm 2004; Ogus 2004). This governance structure meant that the policies influencing energy prices were made predominantly in Ofgem, within their procedures of developing and designing policies. A more detailed view was therefore needed to understand how ways of knowing at Ofgem played a role in regulatory procedures that resulted in regulatory policies. This detailed view is provided by focusing specifically on policy formulation: a series of interlinking tasks that resulted in a policy that impacted the operation of the energy supply market in GB.

Policy formulation is the set of procedures that translate policy intentions into a policy that can be enacted and has an impact (Howlett 2010; Strassheim and Kettunen 2014; Wu et al. 2017). Policy formulation is enacted by individuals within institutions and organisations, as they consider evidence and make decisions. Policy formulation procedures are made up of five interlinking tasks, undertaken by policy formulators within institutions (De Ridder et al. 2007; Dunn 2015; Jordan and Turnpenny 2015). The first is problem characterization by policy makers who identify issues that require a response. The activities within policy characterization include selections of evidence to describe what the problem is and what its cause might be, in other words, to describe the nature of the problem (Baumgartner and Jones 1991; Kingdon and Thurber 1984; Thomas 2001). The second task is problem evaluation that sees policy makers determining the extent of the problem and its policy-relevant dimensions (Wolman 1981; Wu et al. 2017). The third task is objective specification where the aims to be met by the policy, and the timescales for meeting those aims, are set (Howlett 2010; Wu et al. 2017). The fourth task is the assessment of different options that might meet those aims (Howlett, Mukherjee, and Woo 2015; Wu et al. 2017). The fifth and final task is the design of policies: the choice of how a policy might be implemented to respond to the problem identified during the first task (Howlett 2010; Howlett et al. 2015; Wolman

1981). Policy formulation is a stage of policy making that has been acknowledged as opaque in research that analysed Government policy (Hargrove, 1975; Howlett and Geist 2012). Not only are formulation activities opaque, they include important decision-making procedures that are dominated by those with specialist knowledge within an institution (Giest and Howlett 2012; Wu et al. 2017). Policy formulation activities are: *“a political netherworld, dominated by those with specialist knowledge [and] preferred access to decision makers”* (Giest and Howlett 2012; p. 19).

I therefore set out to uncover the details of regulatory policy formulation with the expectations of generating similarly insightful findings. Each of the tasks of policy formulation includes drawing on the knowledges of policy makers (Giest and Howlett 2012; Jordan and Turnpenny 2015). Explaining the role of consumer knowledges within policy formulation tasks in energy market regulation can therefore identify which tasks were impacted by what type of knowledges. However, even understanding tasks that are undertaken by Ofgem was not sufficient to understand *how* knowledges were being used within tasks of policy formulation. This is because identifying the tasks is insufficient to understanding what actions the individual actors who are responsible for tasks are doing to conduct these tasks (Craft and Howlett 2012; Hisschemöller and Cuppen 2015; Howlett et al. 2015; Jordan and Turnpenny 2015; Thomas 2001). To reveal how knowledges were used, I identified the *tools* being used in policy formulation tasks. Tools of policy formulation are:

“a technique, scheme, device or operation... which can be used to collect, condense and make sense of different kinds of policy relevant knowledge to perform some or all of the various inter-linked tasks of policy formulation.”

(Jordan and Turnpenny, 2015; p. 269)

Tools of policy formulation are the mechanisms used by actors to conduct the tasks undertaken to produce policies. These include cost - benefit analysis, impact assessments, participatory procedures of gathering views, scenario evaluation and economic modelling (Dunlop and Radaelli 2019; Eliadis, Hill, and Howlett 2005; Howlett 2010; Jordan, Wurzel, and Zito 2013). Each of these tools gathers knowledge through a range of different activities, such as listing known costs and extrapolating from data the probable impacts or consequences. Specific tools are mandated by governments for use by regulators. For example, Ofgem was required to use impact assessments where policy decisions would have a material consequence for the profitability of firms and use participatory tools to evaluate proposals (Department of Business, Innovation and Skills 2011; Ofgem 2005c).

In “Tools of Policy Formulation”, Jordan and Turnpenny (2015) propose a framework to identify which tools are being used to formulate policies. Specifically, the Tools of Policy Formulation (TPF) framework proposes that four particular aspects of tools are important to examine: actors, venues, capacities and effects. These are summarised in Table 3.1 and described below.

Table 3.1 Tools of Policy Formulation Analytical Framework
 (Summarised from Jordan & Turnpenny 2015, p. 20-23)

TPF Question	TPF Sub Question
1. Who are the actors participating in policy formulation?	Why did these actors develop and/or promote particular tools? Why were particular tools developed, when and by whom? What values do the tools embody?
2. What factors shape the selection and deployment of particular tools in particular policy venues?	How do tools and venues intersect in practice?
3. What capacities are enabled by tools and the actors who employ them?	What factors enable and/or constrain these capacities? Are there factors which may enable or constrain the availability of these capacities?
4. What effects does the tool generate when employed?	What substantive effects does the tool generate when employed? What procedural effects does the tool generate when employed?

As demonstrated in Table 3.1, the TPF framework sets out four areas of focus. First, these tools are used by actors of policy formulation - the employees of the institutions with the relevant powers to translate the plans of governments and

regulators into the policies that impact citizens (Howlett et al. 2015; Jordan and Turnpenny 2015). Second, these actors use tools within venues - institutions that are usually within governments but can be in alternative institutions, such as regulators, and are the locations where policy formulation tasks are performed (Baumgartner and Jones 1991; Jordan and Turnpenny 2015; Timmermans and Scholten 2006). Analysing the venues of policy formulation incorporates the purposes of tools and what factors within a venue lead to the use of a particular tool. Third, the tools are expected to provide particular analytic capacities to the actors who are using them within the venues.

In analysing the capacities related to tools of policy formulation, it is important to note that there are constraints regarding the way that analytic capacities are provided to actors by tools - the capacities linked to the tool itself and the capacities of the actor will both bound the scope of the analytic capacity (Jordan and Turnpenny 2015). Previous research has revealed the limitations of the scope of particular tools and their use by actors has provided insight regarding the capacities of actors using cost - benefit analysis and impact assessment tools (Adelle et al. 2016; Atkinson et al. 2018; Dunlop and Radaelli 2016; Ferretti 2017; Jordan and Turnpenny 2015). Further, participatory tools are expected to extend the analytic capacity of actors of policy formulation by bringing new evidence from beyond the institution (Cuppen et al. 2010; Hisschemöller and Cuppen 2015; Hisschemöller and Hoppe 1995; Smith 2009). However, the embedded values of actors using participatory tools in Government policy limited the policy outcomes that resulted (Beierle 2010; Chilvers 2010; Hoppe 2018; Pallett and Chilvers 2013; Yearley, Forrester, and Bailey 2001). I therefore expected to generate similarly important insight from revealing the implications the use of tools had for capacities in practice between 2000 and 2016 within Ofgem.

The fourth and final focus area of the TPF framework is the analysis of the effects of the tools of policy formulation, including the intended and unintended effects of the tools (Jordan and Turnpenny 2015). In presenting the TPF framework, Jordan and Turnpenny (2015) two distinct types of effects of tools were identified: substantive effects and procedural effects. Procedural effects are influences on the procedures within policy formulation procedures, which could include new opportunities to identify particular problems to policy actors or engage with new ones (Elliott and Salamon 2002; Turnpenny et al. 2009). Substantive effects are outcomes of the tools on the way that problems are understood within policy formulation, which can result in new ways of securing policy goals (Lehtonen, Sébastien, and Bauler 2016; Smith 2009; Turnpenny et al. 2009). Previous research with a focus on energy systems beyond market regulation concluded that the embedded implicit assumptions within institutions shaped the way that people were known and therefore the outcomes of policies (Cotton and Devine-Wright 2012; Devine-Wright 2012; Scrase and Ockwell 2009; Shove 1997). By adopting the TPF, I intended to trace the impact of embedded implicit assumptions on the way that people were known within Ofgem and the impact that this had on the policies that resulted. Those who design or use tools may have a particular intention for a tool to have a particular effect (Elliott and Salamon 2002; Voß and Simons 2014). By incorporating analysis of the effects of tools in my thesis, I aimed to ensure that an empirical focus captured both the intended and unintended effects of tool use within Ofgem.

3.2.2 What is the Problem Represented to Be?

As I explained in Chapter 2, research analysing energy policies regarding climate change and energy infrastructure placement identified important consequences of specific discourses and their associated expectations of expertise on policy making procedures and outcomes (Cotton and Devine-Wright 2011, 2012; Devine-Wright

2012; Scrase and Ockwell 2010; Shove 1997; Wilhite et al. 2000). This research indicated that to answer my research question, identifying expectations regarding expertise would be central. Further, historically contingent ways of knowing are important because they operate as a key restraint on institutions and policy actors by constraining 'conventional' understandings and existing rules of procedures (Fischer et al. 2015). In understanding the role that particular knowledges play I also drew on the findings from research in diverse fields showing that the development of new ways of knowing can be a significant challenge in policy procedures (Chappells and Shove 2005; Jordan et al. 2013; Scrase and Ockwell 2009; Weiss 1979). This has an important causal effect on how policies are developed due to the way that procedures can embed assumptions regarding what 'appropriate' actions are, how they can be understood and who has relevant expertise (Fischer et al. 2015; Rein and Schön 1993; Yanow 2000).

I therefore set out to incorporate into my analysis a framework that provided a structure that would reveal the roles of knowledges within regulatory policy procedures. Which historically contingent ways of knowing played a role? Which policy actors were considered 'expert' in relation to which types of knowledge? Did particular knowledges constrain policy procedures? To respond to these questions, I used Bacchi's (2009) policy studies framework: "What is the Problem Represented to Be?" (WPR).

The goal of the WPR approach to policy analysis is to interrogate the problematisations in selected policies, through scrutinising the premises and effects of the problematisations contained within them (Bacchi 2000, 2009a; Bletsas and Beasley 2012). This does not necessarily concern the intentions of policy actors but considers central the need for analysis to identify the deep conceptual assumptions embedded within policies (Bacchi 2009a). The WPR approach ensures a particular focus on assumptions that identifying categories and measurements of people in a

particular way, providing insight into how particular problem representations are considered relevant and which are not. The impact of these ways of knowing are not only theoretical but create decisions that have an impact on the policies that shape the lives of citizens. In this way, identifying and explaining assumptions within policy procedures draws out the connections between these assumptions embedded in policies and their impact in terms of lived effects. I therefore incorporated into the research design for this thesis a framework for policy analysis that directly responds to the role of different ways of knowing within policy, by tracing the impact of the way policy problems are conceptualised by powerful policy actors (Bacchi 2000; Bacchi and Bonham 2014; Bletsas and Beasley 2012; Fischer et al. 2015).

The WPR framework incorporates an expectation that historically contingent knowledges will impact the operation of policymaking and policy outcomes. The WPR framework has a theoretical foundation in the work of Foucault and therefore incorporates the idea that policies are not responding to problems that exist in the social world but construct a specific and contingent problem (Bacchi 1999; Bacchi and Bonham 2014; Foucault 1991). The procedure construction of a policy problem is 'problematization' (Bacchi 2009a; Fischer et al. 2015). Identifying and describing how policy procedures result in a particular problematization can be revealed by probing policy proposals, to explain the role of implicit assumptions (Bacchi 2009a). This allows analysts to expose normative positions and statements and test claims of 'inevitable' or 'obvious' policy responses to problems. It is important to note that Bacchi (2009) does not argue that there are not real issues that exist in society and cause harm. Rather, 'policy problems' are specific representations of the social world with specific, contingent understandings (Bacchi 1999, 2000; Bacchi and Bonham 2014). Bacchi argues that analysis should therefore uncover how issues or 'problems' are analysed, classified and regulated (Bacchi, 2012). While this

approach originated in Bacchi's work on policy related to gender (1999), it has been used as a framework for policies regarding equality (Cumming-Potvin and Martino 2018; Maximova-Mentzoni and Egeland 2019), public health (Jackson et al. 2016; Lancaster, Duke, and Ritter 2015), education (Bottrell and Goodwin 2011; Holloway 2019) and welfare support schemes (Browne-Yung et al. 2016; Goodwin and Robinson 2016; Norocel 2016; Pantazis 2016; Roulstone and Prideaux 2012). At the time of conducting this research, it had not, however, been used to analyse energy policy. I investigated problematizations to uncover assumptions and accepted knowledge that related to a particular circumstance and historical context of energy regulation in GB.

Importantly, WPR explains why policies benefit one group and fail others, by revealing the implicit assumptions within policies through identification of problem representations (Bacchi 2009b). Investigating problem representations can expose the assumptions and accepted knowledge that rest on particular circumstances in a particular historical context (Bacchi 2009b, 2012; Bacchi and Bonham 2014; Bletsas and Beasley 2012). The representation of specific 'problems' are not developed and embedded in isolation (Bacchi and Goodwin 2016). Instead, problem representations are connected to the historical and social context that surrounds them (Bacchi 1999, 2009b; Bacchi and Goodwin 2016). This is key to exposing the contested and context dependent nature of policy responses to issues, through identifying how issues or 'problems' are analysed, classified and regulated (Bacchi and Bonham, 2012). Identifying and analysing how policy 'problems' are represented reveals the implicit assumptions that are operating within policy procedures (Bacchi 2012). Understanding these implicit assumptions can, therefore, reveal how certain groups of people benefit from a particular policy or set of policies (Bacchi 1999, 2012; Schneider and Ingram 1993; Schneider et al. 2005).

The WPR approach is intended to guide analysis through a series of questions, set out in Table 3.2, to critically interrogate public policy (Bacchi 2009b, 2012; Bletsas and Beasley 2012; Turnbull 2013). This framework enables the analysis of how problems are presented within a policy document and to draw conclusions regarding which powerful discourses influenced it and the consequences in terms of the influence of different ways of considering this problem. The WPR framework is presented as a research strategy rather than a methodology per se, but provides a framework in the form of a series of questions to develop analysis (Bacchi 2009b).

Table 3.2 “What is the Problem Represented to Be” Questions
(Summary of Bacchi, 2009, p. 11 - 13)

	1. What is the policy or regulation proposing?	2. What are the implied representations?
Analyse “What is the Problem Represented to Be?” in the policy	<p>What practices and procedures have led to this representation?</p> <p>Can / has the ‘problem’ been thought about differently?</p> <p>How/where has this representation of the ‘problem’ been produced disseminated and defended?</p>	<p>What concepts, characterisations and categories are used?</p> <p>What are the silences?</p> <p>How could it be questioned, disrupted replaced or reproblematised?</p>
Identify what the effects of the problem representation are	What are the lived effects?	What are the discursive effects?
Reflect on “What is the problem represented to be”? by the researcher		

I posed the questions described in Table 3.2, which are the detailed stages of the WPR framework, through coding the policy proposals contained in policy texts (as I go on to describe in detail in section 3.2). As set out by Bacchi (2009b), I began with a single specific policy or legislative document and expanded my examination to associated texts such as parliamentary debates, ministerial pronouncements, related government reports and media statements, to build a fuller picture. Each question was posed in turn multiple times against similar policy texts, due to the embedded nature of problematisations.

A development in terms of the application of WPR includes interviews with those involved in policy making to draw out further detail of the context of policies and the practices which shape policy making (Bacchi 2012; Bletsas and Beasley 2012). In

addition, I followed the later adaptation of the WPR framework and incorporated the transcripts of interviews into the analysis (Bletsas and Beasley 2012). Following contemporary applications of the framework (Goodwin and Robinson 2016; Maximova-Mentzoni and Egeland 2019; Norocel 2016), I included transcripts from interviews with policy actors to incorporate an understanding of how the people involved in policy procedures represented problems in their own descriptions of events, within policy-making and understandings of solutions to policy problems (I describe my use of interview transcripts in section 3.2.2 below). As described in Table 3.2, there are two groups of questions to investigate problem representation: the explicit procedures and procedures regarding a policy and the implicit meaning making within those procedures (Bacchi 2000, 2009b; Bacchi and Goodwin 2016). Implicit meaning making within policy can be identified by exposing the discourses: identifiable patterns of meaning making that are based on a shared understanding of social objects (Bryman 2016; Wetherell, Taylor, and Yates 2001a, 2001b) and that can be traced as they influence policy processes and outcomes. Particularly valuable in comparing the role of knowledges within policy processes, is the concept of framing. Frames are powerful ways of constructing a way of understanding a policy problem that provide boundaries to simplify often complex topics (Bacchi 2000; Hajer 2002; Strassheim 2017). Identifying problem representations allows researchers to uncover the contingent discourses and frames as partisan and context-dependent rather than a 'natural solution' to a constructed policy problem (Bacchi and Goodwin 2016; Fischer et al. 2015; Strassheim et al. 2015).

Identifying the representation of the problem then enables the effects of a policy to be identified. Both the policy itself and the analysis produced by the researcher have the same questions posed in turn. The questions posed assume that any policy proposal put forward (including those of a researcher) may reflect deep seated

cultural assumptions. This approach incorporates an assumption that the discourses within policies are not neutral. They have effects, results and outcomes that shape the lives of citizens. The impact of responding to the questions described above, in response to the data collected as part of this thesis, is discussed in section 3.3.

3.2.3 Energy Justice Framework

In Chapter 2, I explained that the Energy Justice framework had been applied to a range of case studies related to energy systems from multiple countries by researchers from multiple disciplines (Halff, Sovacool, and Rozhon 2014; McCauley 2018; Sovacool 2013; Sovacool et al. 2017). In this section I briefly link the preceding discussion to my research. Researchers who have applied the Energy Justice framework broadly adopt a focus on three pillars of justice in terms of:

“...distribution, recognition, and procedures. We did so on the understanding that if injustice is to be tackled, one must (a) identify the concern - distribution, (b) identify who it affects - recognition, and only then (c) identify strategies for remediation - procedures.”

Jenkins et al. 2016 p. 15

I therefore set out to identify distributional, recognition and procedural justice concerns of regulatory policies between 2000 and 2016. I adopted the series of questions posed in previous research conducted with the Energy Justice framework, which I list in Table 3.3.

Table 3.3 Energy Justice Framework

Synthesis of frameworks from Jenkins, McCauley, and Forman (2017) and Sovacool et al. (2017)

Energy Justice Pillar	Question
Distribution	Is right to fairly access energy services respected? Is intragenerational equity considered? Are energy services affordable for all?
Recognition	Are diverse needs for energy services recognised? Are intersections of needs responding to evolving identities in modern societies recognised to respond to links between energy justice and other forms of injustice, e.g. political or socio-economic?
Procedures	Are due procedures respected? Are procedures transparent? Are decision makers accountable? Are energy injustices actively, deliberately opposed?

I posed each of the questions in Table 3.3 in turn to the data collected, as I go on to describe in section 3.3. When posed to regulatory policy, this meant that I was able to identify three features of regulatory policies: first, distributional outcomes of regulatory decisions that were made in the period studied; second, the extent to which diverse energy needs were understood by the regulator and whether they were acted upon; third, whether the procedures followed in the regulatory policy making met the standards that would meet the expectations of procedures that

deliver Energy Justice. Further, identifying these three separate factors enabled me to trace interactions of injustice in the manner set out by Schlosberg (2009), as I described in Chapter 2. In order to reveal the injustices embedded in the regulatory policy procedures and identify their outcomes, I therefore needed to identify those procedures and collect data regarding the manner in which those procedures functioned. I explain my data collection and approach to analysis in section 3.3.

3.2.4 Combining frameworks

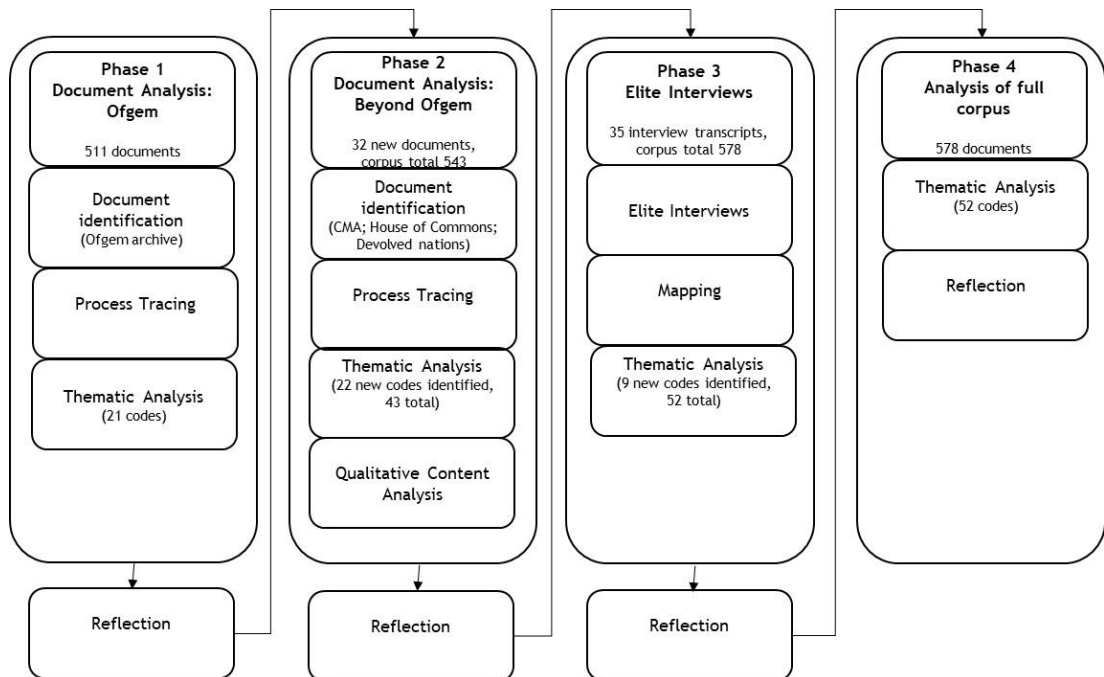
In order to analyse policy formulation in GB between 2000 and 2016, I developed a coding frame that included each of the questions from TPF, WPR and EJJ (set out in Tables 3.1, 3.2 and 3.3). This initial coding frame was then extended in line with themes that emerged as I analysed my data. The application of each of these frameworks in previous research had included a shared focus on texts related to policy making, often in combination with interviews to provide an explanation of the relevant context (Bacchi 2009b; Bletsas and Beasley 2012; Jordan and Turnpenny 2015; Simcock et al. 2016a). I therefore combined documentary analysis and elite interviews in the manner described in the sections below.

3.3 Data Collection and Analysis

In order to answer the question “What role did knowledges of ‘consumers’ play in the formulation of GB energy market regulation between 2000 and 2016”, I used public domain documents from online archives and conducted elite interviews. This combination is common in policy analysis (Bryman 2016; Burnham et al. 2008; Marsh and Stoker 2002) as it combines the benefits of the two both approaches: insight from the formal mechanisms of governance as published in text (Bazeley 2013; Kracauer 1952; Mayring 2004; Yanow 2000) and context from those involved in the procedures surrounding the policy-making described within those texts (Davies

2001; Harvey 2011; Lilleker 2003; Richards 1996). As demonstrated in Figure 3.1 below, my data collection and analysis consisted of four phases.

Figure 3.1 Phases of Data Collection and Analysis



The first three phases of findings from my analysis (Phase 1 to Phase 3 in Figure 3.1) extended the data collected in each phase. Embedded within my data collection and analysis were regular periods of reflection to take stock of my approach and, in line with the WPR framework, to scrutinise “What am I representing the problem to be?” I used a highly iterative approach of analysing individual policy documents and interview transcripts on multiple occasions, as different stages of analysis revealed new insights. I describe my procedures of data collection and analysis in full in the sections below.

3.3.1 Documentary Analysis

Phase 1 consisted of documentary analysis. Documentary analysis is adopted as a common foundation for policy analysis as:

“Political texts are the concrete by-product of strategic political activity and have a widely recognized potential to reveal important information about the policy positions of their authors. Moreover, they can be analysed, reanalysed, and reanalysed again without becoming jaded or uncooperative.”

(Laver et al. 2003, p. 311)

Part of the centrality of documentary analysis to policy analysis in GB relates to the fact that decision-making institutions are required to meet measures of transparency and publish documents that explain the procedures undertaken and policy scope decisions (Burnham et al. 2008; Keman 2014). When collecting texts for this thesis I began with the online archive of regulatory documents from Ofgem which was made available in full in 2012. I opened every document in the archive and used keyword searches to identify whether each document included relevant content relating to GB domestic retail energy policy, to create a documentary corpus of regulator policy formulation. These keywords are listed in Appendix Table A4. To ensure that all relevant documentation regarding market regulation that could have impacted domestic energy users was identified, each document was reviewed individually to ensure that I only excluded documents focused on transportation of gas, the transmission and distribution of electricity, wholesale gas and electricity markets, carbon reduction programmes and retail supply of business customers of all sizes. Where a document included multiple areas, which included an element of domestic retail, the text was included for analysis. For example, reviews conducted by regulators in 2009, 2011 and 2015 included domestic consumers, business consumers and wholesale markets (Competition and Markets Authority 2014; Ofgem 2008b, 2011h). This meant that if the title and description chosen by Ofgem in their online archive failed to reflect that it did impact domestic retail markets, I did not exclude it in error.

This resulted in an initial documentary corpus of 511 PDF texts which I loaded into the Qualitative Content Analysis software Nvivo. Documents regarding retail market for domestic consumers included policy decisions, stakeholder consultations, responses from stakeholders, submissions to parliamentary inquiries and research reports. Of these documents, 133 were authored by Ofgem and 378 were responses to Ofgem stakeholder consultations. I conducted a pilot analysis using a subset of documents related to a single market review, conducted by Ofgem between 2008 and 2009. This pilot included 6 Ofgem publications and 72 stakeholder consultation responses. This tested my initial coding frame and I found that the questions from the frameworks both identified knowledges that were present in regulatory policy documents and provided insight into the role of these knowledges.

The pilot also enabled me to begin procedures tracing. Procedures tracing is the linking of events described within documents to build visibility of a chain of events (Bennett and Checkel 2015; Pouliot 2015). Procedures tracing links these texts to each other to identify how they relate to each other and how ideas translate into policies that have an effect in that they *“Narrate the unfolding of history and disaggregate it in smaller bits of time”* (Pouliot 2015, p. 237). I found that the contents of the documents included a description of linked policy events, context and events needed for procedures tracing. Further, during the pilot I found that applying the coding frame allowed for the identification of themes based on the frameworks and supported my identification of emerging themes (my coding frame is described further below). I was therefore confident that my approach would result in the benefits of thematic analysis - building familiarity with the data that I had collected, reveal connections and differences and identify any patterns across the time period studied (Braun and Clarke 2013; Holloway and Todres 2003; Ryan

and Bernard 2000). I therefore proceeded to read the 511 documents and conducted thematic analysis and procedures tracing.

Procedures tracing in phase 1 revealed examples where policy discussions occurred beyond Ofgem. For example, a series of individual documents from the Ofgem archive described the announcement of a market review, a series of consultations on problems identified within that review, a document describing the Retail Market Review decision and reports (Ofgem 2010f, 2011h, 2012i, 2012k, 2012m, 2012l, 2012o, 2013j, 2013k). However, there was also a House of Commons Select Committee report on the work of Ofgem (House of Commons Select Committee on Energy and Climate Change 2011).

At this stage, I reflected on my approach to the analysis of the documentary corpus. This first reflection resulted in the identification of the shortcomings of focusing entirely on the Ofgem archive. The Ofgem archive included documents that explained engagement with other institutions through a review at the Competition and Markets Authority (CMA) and engagement with Parliamentary inquiries in the Houses of Parliament, the Scottish Parliament and Welsh Assembly.

Phase 2 therefore began with a search of the relevant online archives of each of these institutions using a keyword search (listed in Appendix Table A4). This keyword search identified 32 further documents connected to the procedures contained within the Ofgem archive, along with further parliamentary inquiries that had not been referred to in the Ofgem archive, bringing the corpus to 543 texts. I conducted thematic analysis of the 32 texts from beyond the Ofgem archive and extended my procedures tracing to incorporate the additional institutions. This expanded my procedures tracing to incorporate the formal interactions between

Ofgem and the UK Government, CMA and the UK Parliament. The results of my procedures tracing are presented in full in Chapter 4.

When I completed my thematic analysis of the corpus of a total of 543 texts, I reviewed the findings against the frameworks from policy studies that I had chosen, i.e, WPR and TPF, to reflect on the extent to which the questions from these frameworks had been answered. As a result of this second reflection, I identified that further detail was required to answer three framework questions. I needed further analysis for the TPF framework to identify what values the tools of policy formulation embodied. I also needed further analysis to explain the two related WPR questions of “What is the Problem Represented to Be” and the interaction of concepts, characterisation and categories used in problem representations in regulatory policy decisions. To analyse the texts at a more detailed level, so as to answer these three questions, I decided to use qualitative content analysis of documents authored by Ofgem and the CMA related to policy decisions, to provide more detailed insight into these three questions. Qualitative content analysis enabled me to probe the concepts and characteristics that made up the characterization and representation of problems within the formulation, by analysing the implicit and explicit ideas and meaning making within the corpus (Kracauer 1952; Mayring 2004). I adopted these themes as nested codes and then revisited the corpus to identify any further contributing insight against that theme and reviewed the procedures tracing to consider whether there were further links that I had not yet identified. I identified which documents in my corpus contained regulatory policy by listing those that related to a regulatory policy decision - even where that decision was not to take action. I therefore conducted qualitative content analysis on a subset of 37 documents from my corpus, as listed in Table 3.3. This excluded research reports and responses to consultations from policy

actors beyond Ofgem that provided the context of these decisions. However, both types of document were cited within documents discussing regulatory decision making, which meant that my qualitative content analysis was able to incorporate the role of cited documents where they had a role in problem representations or the embodiment of values within tools. This qualitative content analysis phase resulted in identifying a further 22 themes to add to my coding frame and use for an additional thematic analysis of the documentary corpus.

Table 3.4 Regulatory Policy Documents for Qualitative Content Analysis

Subset of 37 regulatory policy texts selected for Qualitative Content Analysis

Publication name	Author
Social Action Plan: Improving Social Obligations Proposals Document	(Ofgem, 2000a)
The Social Action Plan	(Ofgem, 2000b)
Review of domestic gas and electricity competition and supply price regulation	(Ofgem, 2001c)
Making Markets work for customers - Vol I, II & III	(Ofgem, 2003a, 2003b, 2003f)
Domestic Market Review	(Ofgem, 2004b)
Social Action Strategy, Ofgem	(Ofgem, 2005e)
Energy Supply Probe Call for Evidence	(Ofgem, 2008c)
Energy Supply Probe Initial Findings Report	(Ofgem, 2008d)
Addressing Unfair Price Differentials	(Ofgem, 2009j)
Energy Supply Probe Remedies	(Ofgem, 2009i)
Addressing undue discrimination	(Ofgem, 2009a)
Debt and Disconnection Review	(Ofgem, 2008a)
Vulnerable Customer Disconnection	(Ofgem, 2009l)
Notification of modifications of standard licence condition 27.11	(Ofgem, 2010e)
Retail Market Review	(Ofgem, 2010h)
Retail Market Review Findings and initial proposals	(Ofgem, 2011k)
The Standardised Element of Standard Tariffs under the Retail Market Review	(Ofgem, 2012t)
Retail Market Review - Updated Domestic Proposals	(Ofgem, 2012p)
Draft domestic licence conditions for the Retail Market Review proposals	(Ofgem, 2012h)
Retail Market Review - Final Domestic Proposals	(Ofgem, 2012o)
The Retail Market Review - Implementation of Simpler Tariff Choices and Clearer Information	(Ofgem, 2013k)
Implementation of the domestic Standards of Conduct - decision to make licence modifications	(Ofgem, 2013g)
Proposal for a new Consumer Vulnerability Strategy	(Ofgem, 2012l)
Energy Affordability: helping develop Ofgem's Vulnerable Consumers Strategy	(Ofgem, 2012i)
Consumer Vulnerability Strategy	(Ofgem, 2013c)
Consultation on a proposal to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain	(Ofgem, 2014a)
Energy Market Investigation, Issues Statement	(Competition and Markets Authority, 2014)
Energy Market Investigation, Updated issues statement	(Competition and Markets Authority, 2015b)
Energy Market Investigation, Provisional decision on remedies report	(Competition and Markets Authority, 2016c)
Energy Market Investigation, Final Report	(Competition and Markets Authority, 2016b)
The Energy Market Investigation (Database) Order 2016	(Competition and Markets Authority, 2016d)
The Energy Market Investigation (Restricted Meters) Order 2016	(Competition and Markets Authority, 2016e)
The Energy Market Investigation (Prepayment Charge Restriction) Order 2016	(Competition and Markets Authority, 2016f)
Decision to make modifications to the gas and electricity supply licences to reform the switching processes for indebted prepayment meter customers (DAP)	(Ofgem 2015f)
Proposals to improve outcomes for prepayment customers	(Ofgem, 2015i)
Prepayment meters installed under warrant: final proposals	(Ofgem, 2016f)
The Future of Market Regulation	(Ofgem, 2016j)

By this stage in my research, I had conducted three iterations of thematic analysis and two interactions of procedures tracing, based on documentary analysis. However, there are two important limitations to documentary analysis: the emerging bias of the researcher and the reliability of the content of documents (Bazeley 2013; Bryman 2016; Kvale 1996). Nonetheless, documentary analysis is one of the most reliable methods available to policy analysis when elite interviews are used to triangulate findings (Harvey 2011; Lilleker 2003; Richards 1996). I therefore combined my use of documentary analysis with elite interviews, as I go on to describe in section 3.3.2.

3.2.2 Elite Interviews

There are multiple ways I could have gone about developing insight into the context of these texts in order to respond to my research question (Burnham et al. 2008; Pierce 2008). In order to reveal the role that ways people were know in policy procedures, I sought to identify and describe the meanings, behaviours and experiences of the individuals involved in those procedures and therefore aimed to gather qualitative data on those experiences (Bazeley 2013; Miles, Huberman, and Saldaña 2014; Seale et al. 2004; Silverman 2016). Elite interviews focus on drawing out insight from influential interviewees who have unique knowledge based on their experiences in a particular setting or position (Burnham et al. 2008; Davies 2001). Further, those close to the development and implementation of policies can describe the intended or expected effects of policy and the logics implicit within those expectations (Kvale 1996; McEvoy 2006). While previous qualitative studies regarding energy policy decision making adopted either focus groups or participant observation (Sovacool, Aksen, and Sorrell 2018) I did not for two reasons, both of which are associated with the findings from my documentary analysis. First, I wanted to secure a detailed narrative from the experiences from different

organisations and institutions to comment on regulatory policy procedures. I therefore sought to hear directly from an individual without responding to others in a focus group. Further, the range of organisations and institutions I had identified meant that some participants were likely to be geographically dispersed, meaning it would be a challenge to convene a group in a time and location convenient to participants.

While focus groups would not have been appropriate for my research design, participant observation through an ethnographic approach might have been an insightful option given that ethnography enables the researcher to directly experience the embedded implicit assumptions of a setting in their own experience (Bryman 2016; Mackenzie 1994). This could have been within one of the teams within Ofgem or an organisation engaging with Ofgem to try and shape the way that regulatory policy “knows” consumers. However, choosing a single organisation would not have provided an insight into the range of regulatory policy actors I had identified within my documentary analysis or provide insight into the full period of analysis. Instead, I conducted elite interviews in the third phase of research as individual discussion seemed most likely to result in insights about any differences in the use of knowledges (Davies 2001; Harvey 2011; Plas and Kvale 1996; Richards 1996).

The elite interviews were conducted via telephone which I recorded and transcribed in line with the consent provided by interviewees. While face to face interviews can provide insight regarding nonverbal behaviour and support the building of rapport with the interviewer, conducting telephone interviews had the benefit of flexibility in terms of securing time with interviewees (Bailey 1994; Bazeley 2013; Bryman 2016; Halperin and Heath 2016). I expand on my use of telephone rather than face to face interviews in section 3.4.

I adopted the Research Ethics Policy of the University of East Anglia (University of East Anglia 2018). This included securing informed consent for the recording of interviews and providing descriptions of the research methodology which explained that interviews and documents would be analysed. Interview transcripts were held securely on the University of East Anglia servers in a password protected file. Interviewees were anonymised in my research. Keeping the identity of interviewees can be a challenge due to the fact that few people hold particular positions within an individual organisation within a particular time span (Bryman 2016; Burnham et al. 2008). For example, naming “an Ofgem CEO” would not be sufficient as particular regulatory activities occur within the time span of a particular set of regulatory activities. In order for the identity of interviewees to remain confidential, interviewees are described in terms of the type of organisation or institution they worked for with no associated time period. Interviewees are listed by their code in Table 3.4. The confidential nature of the interview was described in the initial email requesting participation and restated at the beginning of the interview. I secured informed consent to record via email in advance of the interview and at the beginning of the interview itself. Five interviewees paused in description of the events to request a restatement of confidentiality before continuing their description of events. In these interviews I restated that neither their name or the name of their institution or organisation would be named and explained the way that their narrative would be presented in any output in terms of illustrative quotes. Interviewees were also informed that they could withdraw their participation at any time with no negative consequences.

In line with the UEA research policy, participants also received a debriefing which included a description of the timelines of publication of interim findings of this thesis in presentations at the University of East Anglia and at a research presentation event in Westminster. All interviewees were invited to the latter,

along with other interested parties. The event presented the interim findings of this thesis alongside Centre for Competition Policy (CCP) research and participants were invited to pose questions. Five interviewees accepted the invitation and posed questions regarding the findings. This supported my confidence that the insights provided by interviewees had been used authentically.

I developed a topic guide for use in interviews which reflected the three frameworks explained in section 3.2 and my insight from the initial iterations of my documentary analysis in the first three phases, described in Figure 3.1. The topic guide, Table A5 in the appendix, focused on three themes: the interactions of organisations formulating regulatory policy; any differences between those organisations; and their ways of knowing consumers. Potential interviewees were contacted via the professional social network LinkedIn (43 requests), through constituency office contacts for elected representatives (11 requests) and via an email of introduction from Professor Waddams Price from CCP (2 requests).

Potential interviewees were approached on the basis of three criteria: the role of their organisation in the provision of knowledge in regulatory decision-making; their participation in procedures contained within policy texts which made up my documentary analysis; and on two occasions, suggested interviewees from participants. In my decision-making, I included consideration of the formal role of the individual at the time of interview, their past roles in the energy industry and their level of seniority. I aimed to incorporate experiences from individuals who could comment on both the strategic direction of regulatory policy and its aim and the detailed delivery of policy-making activities (Davies 2001; Plas and Kvale 1996; Richards 1996).

Initially, this included three groups of regulatory policy actors: those working within economic regulators; those with a formal role linked to democratic governance,

such as civil elected representatives; and organisations seeking to influence regulatory policy formulation, such as third sector organisations and regulated firms. First, I approached regulatory policy actors who worked in teams who focused on the domestic retail market from Ofgem and the Competition and Markets Authority, where analysts were assigned to the energy market investigation. Within the second category, democratic governance, were the traditional policy makers within Government, i.e., civil servants, ministers and Secretary of State. However, I also approached elected representatives to participate. My procedures tracing had identified parliamentary committees, including UK House of Commons and House of Lords committees investigating energy regulation and committees within the devolved administration, with inquiries relating to affordable energy. I therefore approached elected representatives who sat on committees and chaired parliamentary committees. While the majority of policy formulation occurred at the UK Government level, my documentary analysis identified actors in devolved administrations due to the devolution of fuel poverty policy. The third group of interviewees I approached to participate were from organisations who sought to influence regulatory policy decisions. This included third sector organisations and regulated firms. I approached interviewees visible in my documentary analysis. This included campaigning organisations, charities and the statutory consumer advocate.

I identified during my literature review that studies of policy procedures that combined documentary analysis and interviews had a number of participants ranging from 12 to 30. I therefore aimed to interview at least 30 individuals in my research. Interested interviewees were sent an overview of the questions via email that we would discuss if they decided to participate. When interviews were completed, I transcribed them in full. Transcribing the interviews allowed me to engage deeply with the recording on multiple occasions, to pick up audible non-

verbal behaviour, develop familiarity with the narrative of interviewees and begin to note possible nested codes (Braun and Clarke 2013; Bryman 2016; Holloway and Todres 2003; Ryan and Bernard 2000). After completing and transcribing 10 interviews, I regularly noted the implicit discussion of topics that had been linked to considerations of energy justice in the academic literature reviewed in Chapter 2. I therefore decided to adapt my topic guide for interviews to explicitly consider the three pillars of energy justice for the remaining interviews.

When I had conducted and transcribed 30 interviews, I reflected on the insights that had emerged from my transcription and the narrative of interviewees. I concluded that many similar examples and experiences had emerged from interviewees with similar backgrounds and interviewing more individuals from organisations with a similar role in regulatory policy formulation was unlikely to provide additional insight. However, as I conducted my interviews, I found that the interactions between organisations and individuals was more complex than I had expected. I noted interactions of organisations on a whiteboard as they progressed. I could see that the interactions described by interviewees were far more complex than the formal interactions identified in my procedures mapping. I therefore conducted a mapping exercise to analyse the interrelationships between individuals, groups and organisations (Miles et al. 2014). This mapping, presented in full in Chapter 8 in Figure 8.1, suggested that rather than my original three categories of regulatory policy actors, there were six: regulatory governance actors, democratic governance actors, market participants, representatives, monopoly providers and advisors. I reviewed my interviewees against my mapping and the descriptions of different groups from my interview transcripts of those involved in energy supply market regulation. In retail market regulation, there were no monopoly providers engaged in regulatory formulation - these were focused on network regulation. I therefore reviewed the remaining five categories of policy actors to ensure that I had

interviewees from each. This reflection revealed two significant gaps in invited interviewees in terms of organisations: small charities and regulated firms who were not ex-monopolies. I therefore approached further interviewees from these two groups. At the end of this procedure, I had completed and transcribed 35 interviews. This included 7 individuals from regulators (regulatory governance), 5 within democratic governance institutions, 8 with a formal role in representing a particular group (representation), 8 who played an informal advisory role and 7 market participants from regulated firms.

Table 3.5 Elite Interviewees

Interviewee	System location	Anonymised reference
1	Regulatory Governance	RG1
2	Regulatory Governance	RG2
3	Regulatory Governance	RG3
4	Regulatory Governance	RG4
5	Regulatory Governance	RG5
6	Regulatory Governance	RG6
7	Regulatory Governance	RG7
8	Democratic Governance	DG1
9	Democratic Governance	DG2
10	Democratic Governance	DG3
11	Democratic Governance	DG4
12	Democratic Governance	DG5
13	Representation	Re1
14	Representation	Re2
15	Representation	Re3
16	Representation	Re4
17	Representation	Re5
18	Representation	Re6
19	Representation	Re7
20	Representation	Re8
21	Advisory	Ad1
22	Advisory	Ad2
23	Advisory	Ad3
24	Advisory	Ad4
25	Advisory	Ad5
26	Advisory	Ad6
27	Advisory	Ad7
28	Advisory	Ad8
29	Market Participant	Ma1
30	Market Participant	Ma2
31	Market Participant	Ma3
32	Market Participant	Ma4
33	Market Participant	Ma5
34	Market Participant	Ma6
35	Market Participant	Ma7

Of the 35 individuals, 12 had previously held roles in another organisation or institution linked to energy market regulation. I explain these links in a discussion of policy formulation actors in Chapter 6. When I concluded my interviews, I thematically analysed the interview transcripts. I then extended my coding frame to include a further 9 themes which had emerged from the interview transcripts.

Having completed my interviews, I moved to Phase 4, a final analysis of the full corpus. With the interview transcripts, the corpus consisted of 578 texts. I used this completed coding frame to revisit the documentary analysis for a final iteration of thematic analysis. This meant that the full corpus was analysed in line with 21 codes which resulted from the frameworks explained in section 3.1, with a further 31 nested codes that I identified in response to my data analysis. This ensured that each document was analysed under the full coding frame. This full coding frame is presented in sections in the Appendix in Tables A1, A2 and A3. This fourth and final phase of analysis ensured that I connected insight from interviewees to the procedures described in documents. This was particularly central to reveal the silences within the documentary subset of regulatory policies. Where there was a theme that had emerged from interviews that was not adopted as relevant in the documents published by Ofgem or the CMA, it was identified as a silence of regulatory policy between 2000 and 2016, as I go on to describe in Chapter 7.

3.4 Positionality

Particular to my experience of conducting my research was my experience as a participant in many of the activities of regulatory policy development before and during my PhD research. Before beginning the PhD, my career was based on engaging with the regulator, government and devolved administrations regarding affordable energy policies on behalf of an energy supply firm. Further, my PhD was funded by the Centre for Competition Policy (CCP) at the University of East Anglia where there was regular engagement with economic regulators, including Ofgem. As a member of CCP, I delivered research briefings directly to individuals working for economic regulators, contributed to CCP responses to stakeholder consultations conducted by Ofgem and participated in workshops funded by Ofgem for their employees. Finally, while writing up my thesis part time, I took a role for the statutory consumer advocate as a researcher and later, head of department. There

was therefore no point at which there was any relevant or meaningful distance from the procedures of regulatory policy formulation I sought to analyse. In setting out my research design, I therefore sought to ensure that the way I was embedded in some of the procedures I was analysing, provided benefits while maintaining a consistent reflexive focus on the extent to which my engagement with regulatory procedures might impact my research.

The core benefit of a previous career in, and enduring links with, procedures of regulatory policy formulations, related to the interviews I conducted in two areas: access to interviewees and building rapport in interviews. First, I had an extensive network of direct contacts as a base for my approaches for participation. However, I was concerned that solely interviewing individuals whom I had worked directly with might have resulted in an overly narrow experience of regulatory procedures. I therefore asked my existing network for advice and introductions to possible interviewees and limited interviewing people I had worked with where another option was not available. This approach, along with the typically high turnover of staff within the regulator and government, meant that I had only worked directly with two of my 35 interviewees. My links to the CCP were also important, with Professor Waddams-Price of CCP introducing me to 2 further interviewees and 6 interviewees noting in the interview their familiarity with CCP research. Second, my long-standing familiarity with the technical terminology of energy markets and professional network together, led to a smooth building of rapport during the interview itself. As explained in section 3.3.2, rapport with face to face interviewees can be easier than telephone interviews. However, when an interviewee was distracted from a description by being unable to remember an event, name or number, I was able to give the detail and the interview could continue smoothly.

The most significant challenge to beginning the study given my embeddedness in the policy procedures being evaluated, was maintaining a reflexive focus on the implications of my experiences in responding to the data collected (Hanson 2013; Leigh 2019; Munkejord 2009; Weber and Mitchell 1996). This was an important contributing factor to my use of the WPR framework which includes analysing the problem representations of the researcher in their analysis and presentation of findings. This included analysing my own problem representations in the thesis as systematically as analysis of the data collected in my research. This resulted in two adaptations to the original research design of my PhD funding proposal. My original research design reflected two assumptions based on my experience of regulatory policy making before my PhD: that distributional concerns were distinct from economic regulation and that fuel poverty was a separate policy issue from energy price policy. As I conducted my research, it was clear from interviewees and much of the documentary analysis that fuel poverty and regulation had become overlapping issues that were connected in the work of many charities and third sector organisations. Further, the distributional outcomes of economic regulation were not only a core concern of those beyond the regulator engaging in energy market regulation activities: the CMA investigation (which completed after I had begun my PhD) found a clear, and concerning, distributional impact of energy market regulation (Competition and Markets Authority 2016b). I therefore adopted the EJF to ensure that distributional outcomes were a primary and explicit concern within my analysis, rather than an implicit motivation, in conducting my research.

A final way in which my positionality impacted my research design was my motivation to connect my findings to practical recommendations for future procedures of regulatory policy formulation. This led to the adoption of the TPF and EJF frameworks, both of which had been used by researchers to reveal concerns and shortcomings regarding the procedures of policy making (Jordan and Turnpenny

2015; Simcock et al. 2016a). While the WPR provides a powerful lens for revealing concerns regarding policy procedures, it was not designed to result in practical recommendations for policy makers (Bacchi and Bonham 2014). However, many researchers using the WPR have chosen to do so (Goodwin and Robinson 2016; Holloway 2019; Roulstone and Prideaux 2012). Using this combination of frameworks provided me with the confidence of systematic prompts to reflect on the impact of my positionality (through examining my problem representation) alongside frameworks that had historically been used to make practical recommendations regarding policy making. My recommendations that resulted from my analysis are in section 9.2.2.

In presenting my positionality in this thesis, a final contributing factor to the manner in which this research was conducted and impacted by my individual experiences as a researcher, are my choices related to data collection. As a neurodivergent researcher with restricted mobility, conducting interviews with participants or data collection in physical archives were simply impractical. Analysis of contemporary documents available on online archives secured me access to the data required for documentary analysis. Further, telephone interviews from an office at CCP adapted with reasonable adjustments meant that I was able to focus on interacting with the interviewee and securing a strong contribution from individuals towards understanding their perspective on the policy procedures I was analysing.

3.5 Conclusion

In this chapter I have described the analysis I undertook to understand the role of different knowledges in the procedures of energy market regulation in GB between 2000 and 2016. This was a highly iterative process with insights from each stage of analysis guiding new insight using the three different frameworks. In order to

present the findings of my analysis clearly, my empirical work is presented over four separate chapters. First, the outcome of procedures tracing alone is described in Chapter 4. This provides an explanation of the series of regulatory activities undertaken by Ofgem and the Competition and Markets Authority between 2000 and 2016. I then describe the findings from the three separate frameworks independently: EJF in Chapter 5, TPF in Chapter 6 and WPR in Chapter 7. Each framework draws on the full corpus of publicly available texts and interview transcripts. Presenting the findings from each framework separately enables the contribution of each individual framework in revealing the role of knowledges in regulatory policy procedures to be reflected on. I then bring together the insights from the combined analysis, alongside a reflection on the experience of combining these three frameworks, in Chapter 8.

Chapter 4 - GB Energy Market Regulation 2000 - 2016

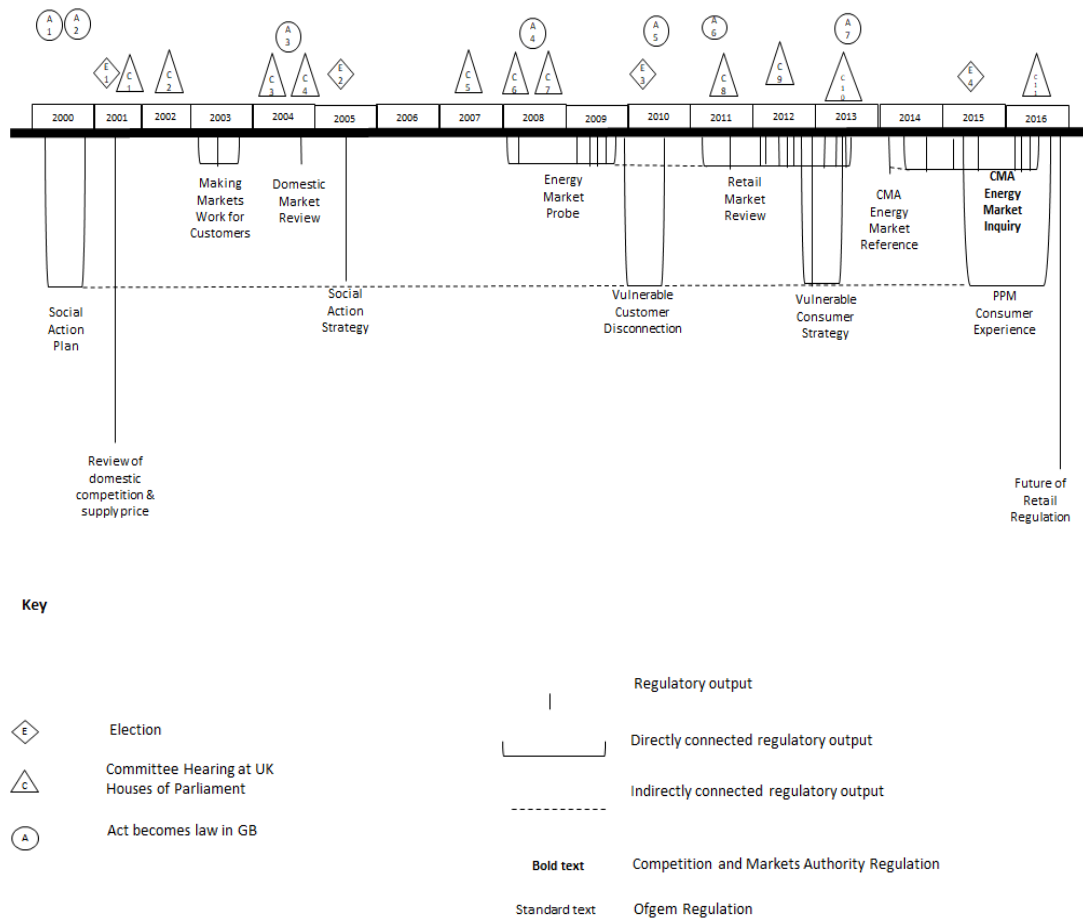
4.1 Introduction

In order to answer the research question “What role did knowledges of ‘consumers’ play in the formulation of GB energy market regulation between 2000 and 2016?”, the events relating to energy market regulation needed to be identified. In this Chapter, I present an overview of those events between 2000 and 2016 that provided the historical context for the analysis presented in subsequent chapters. As described in Chapter 1, this thesis focuses on the activities of the Office for Gas and Electricity Markets (Ofgem) and events described in this chapter are therefore predominantly related to the activities of Ofgem. However, the events are not exclusively related to Ofgem. Instead, as described in Figure 4.1, the period 2000 to 2016 saw scrutiny by committees in the Houses of Parliament, adaptations of Ofgem’s statutory role by Governments and a review of the competitiveness of the energy market by the Competition and Markets Authority (CMA).

Figure 4.1 describes the events of energy market regulatory activities in their political context between 2000 and 2016. This includes elections, Acts of parliament relating to energy regulation and parliamentary committee inquiries relating to the energy market and to energy affordability in people’s homes. A full list of these political event can be found in Table A6 in the appendix of this chapter. Figure 4.1 also includes the outputs of economic regulators - Ofgem and the Competition and Markets Authority - regarding the energy supply market with a focus on people in their homes. A full list of regulatory outputs included in Figure 4.1 is included in Table A6 in the appendix. Plotting the events in this way reveals the points at which parliamentary and government activities had implications for regulatory decisions and vice versa as a foundation for the analysis in subsequent

chapters. Further, I have identified the connections - direct and indirect - between different regulatory activities. The majority of regulatory outputs between 2000 and 2016 comprise not a single output but rather, multiple outputs that are directly linked. For example, the Energy Market Probe saw a series of seven directly linked outputs which began with a call for evidence and regulatory policy proposal and closed with a decision and the implementation of new rules in the supply licence. I also use the content of outputs to reveal the indirect connections between independently conducted work that nevertheless explicitly noted the findings or outcomes of previous work. For example, each set of regulatory outputs that make up regulatory activities regarding vulnerable consumers, note their predecessor's reviews and evidence regarding the experiences of vulnerable consumers in the energy market.

Figure 4.1 Procedures Tracing of affordable Energy Policy and Regulation in GB 2000 - 2016



This broad range of energy market regulation activities was due to the interaction of energy sector specific regulation, elected representatives and competition authorities in GB (Helm 2004). While Ofgem had specific powers regarding energy markets these were granted via laws that could be changed (Deller et al. 2018). Ofgem was also required, via Government guidance, to consider the impact of fuel poverty in its decisions (Ofgem 2005e). This means that Ofgem faced scrutiny regarding energy market operations, energy affordability in households and its connection to fuel poverty policies by elected representatives and committees. Further, Ofgem was able to refer the energy market to competition authorities and did so in 2014 (Ofgem 2014a).

Despite the involvement of governments, committees and other competition authorities, the majority of regulatory policies resulted from the activities of Ofgem. The operation of the market was in line with the regulations that it monitored, enforced and in some circumstances, changed. These regulations were set out in a set of licences which set the boundaries of the behaviour of firms in the energy market (Ofgem 2016e). When considering energy market regulation in relation to people who use energy in their homes, the relevant licences were the domestic supply licences for electricity and gas energy supply firms. In addition to the formal licences, there was a further layer of rules set out in codes of practice - mandatory industry codes and voluntary codes of conduct (Ofgem 2003c). In addition to directing energy supply firms through the supply licences, Ofgem also produced guidance related to these codes (Ofgem 2003c, 2012h; Ofgem and Energywatch 2003). Monitoring, enforcing and changing energy regulations should be done transparently and in a manner that ensures an opportunity for all to interact with the regulator (Department of Business, Innovation and Skills 2011). Ofgem noted that its publications relating to its regulatory activities were aimed at securing responses from energy supply firms, customers, consumer organisations and representatives, academics and other interested parties (Ofgem 2008b).

Considering energy market regulation between 2000 and 2016 therefore means including a diverse range of actions of the regulator and interactions between organisations and institutions. In this chapter, I distinguish between the activities of the regulator - which includes all the events related to regulations and their design and development - and regulatory outputs. I use the term regulatory outputs to describe the decisions that resulted from regulatory activities which articulated an intention of having an impact on the way that the market was regulated e.g. through a new regulation or statement of strategy. Regulatory outputs are distinct from outcomes in that the latter are the consequences of regulatory outputs. In this

Chapter I present regulatory outputs relating to the supply of energy to domestic consumers chronologically, to provide an overview of energy market regulation between 2000 and 2016 in line with the focus on three periods of regulatory events. I begin with the creation of Ofgem and its focus on developing retail markets between 2000 and 2009 in Section 4.2.1. This time period saw a stability in approach from Ofgem in the energy supply market (Ofgem 2004b, 2008e). However, in 2009, Ofgem began implementing reforms it articulated as accelerating the benefits of competition to more consumers (Ofgem 2008d). The regulatory activities undertaken to attempt this acceleration occurred between 2009 and 2013 and are presented in section 4.2.2. Finally, in section 4.2.3 I present events between 2014 and 2016 when the impact of energy regulation on the competitiveness of the energy market was reviewed (Competition and Markets Authority 2014).

4.2 Regulatory Events 2000 - 2016

4.2.1 Regulatory policies to introduce competitive retail markets in energy 2000 - 2009

The Office of Gas and Electricity Markets (Ofgem) was granted statutory powers to regulate energy markets by the Utilities Act of 2000. Ofgem was to “to protect the interests of consumers, wherever appropriate, by promoting effective competition” (Utilities Act 2000, c. 27) . Concern regarding the affordability of energy was not noted in the Utilities Act but was instead the focus of Government fuel poverty policy in the Warm Homes Act (2000). Though Ofgem did not have specific duties regarding fuel poor consumers, it did need to consider guidance from the Secretary of State with regard to impacts of its policies of fuel-poor households. Further, Ofgem was to have regard to the interests of low-income consumers, the chronically sick, the disabled, pensioners and consumers in rural areas (Utilities Act 2000). In line with the need to consider the interests of consumers specifically listed in the statute, the first publication of the new regulator was “The Social

Action Plan” (Ofgem 2000b). This plan described how vulnerable and fuel-poor consumers should be protected from energy supply firms, though not in a way that neutralised the benefits of competitive markets. The Social Action Plan set out three activities to protect fuel poor and vulnerable consumers and enable those groups to benefit from competitive markets. First, Ofgem described supply licence changes to put in place rules that forced energy supply firms to offer new ways for energy consumers to pay their bills and energy debt. Second, the Social Action Plan committed to a regular reporting cycle on indicators and a good practice publication relating to the debt collection activities of energy suppliers and the provision of energy efficiency advice that could support fuel-poor and vulnerable consumers. Third, Ofgem committed to commissioning research that considered barriers to fuel-poor and vulnerable consumers in accessing the benefits of competitive markets. Ofgem argued that these three activities responded to the concerns raised in 2000 that unaffordable energy bills and the resulting energy debt could be avoided if all consumers had access to a range of ways of paying energy suppliers and advice on how to use less energy in the home. The result of the activities were supply licence conditions setting out a more diverse way of paying bills, an annual report on debt repayment and good practice guidance published jointly between Ofgem and the statutory consumer advocate, Energywatch (Ofgem 2002; Ofgem and Energywatch 2003). This guidance encouraged energy supply firms to voluntarily provide accurate bills and to identify and help customers who were “unable to manage their affairs” (Ofgem and Energywatch 2003, p. 5) with advice about using less energy in the home. There was a particular focus on good practice regarding Pre-Payment Meter (PPM) consumers - people who used metering equipment that does not provide energy without paying in advance for their energy. This group were of particular concern due to the fact that they would not be able to switch supplier if they were in debt. Further, the cost of running the

infrastructure that allowed PPM metering technology was costly to run and these costs were charged to PPM consumers. Accessing a meter to pay in arrears required a good credit score, which meant that few PPM customers reported moving onto a credit meter (Ofgem 2000b; Ofgem and Energywatch 2003).

In 2001, Ofgem concluded that competition was sufficiently well established that no price regulation was required for any part of the retail market for domestic energy consumers (Ofgem 2001b). This decision was on the basis that consumers reported being aware that they could switch supplier and that if they did so, there were significant savings that could be secured. Further, the ex-monopoly providers - regulated firms who operated before privatisation - had lost market share. Overall, the findings from the review of domestic competition indicated that competition was well established, effectively protecting customers' interests, and continued to develop well. Ofgem therefore concluded that remaining price controls on electricity and gas could be lifted from April 2002.

Whether the introduction of retail markets in energy supply was successful was a topic of a consultation in 2003 called "Making Markets work for Customers" (Ofgem 2003a, 2003c) . In this consultation, Ofgem set out, for the first time, its priorities for energy customers. These were security of supply and safety, arrangements that facilitated the engagement of consumers with the market and protecting vulnerable consumers - low income consumers, the chronically sick, the disabled, pensioners and consumers in rural areas (Utilities Act, 2000). In a similar way to 2001, Ofgem concluded that competitive markets had continued to develop well and that this was proven by a high awareness among consumers that they could switch supplier, that savings were available in energy markets for people who switched and there

had been a fall in the market share of ex monopoly energy firms. One concern was, however, that the sales and marketing regulations that were due to be removed in line with a sunset clause in 2004 would still be required in the future (Ofgem 2003b). This was because consumers required accurate information to ensure that they could make choices between suppliers and therefore, regulations on information provided to consumers by salespeople would be maintained. Ofgem concluded its review by proposing that the supply licences in 2003 struck the right balance between ensuring that a minimum universal service was available to all, and regulation did not distort competition through too much regulation (Ofgem 2003c).

Confidence that the energy market was competitive and delivering benefits to consumers was maintained again in the Domestic Market Review of 2004 (Ofgem 2004b). However, Ofgem noted three concerns. First, Ofgem raised the concern that the information provided to consumers might require improvement to see more benefit from lower prices after switching suppliers. Second, there was a concern that switching might be particularly difficult where metering infrastructure needed to be changed. Third, Ofgem noted a concern that too much regulation might be a barrier to entry for new energy suppliers who would otherwise enter the market and drive down prices and increase innovation through increased competition. The Domestic Market Review did not implement any changes to energy supply licences in response to these concerns but implemented a reporting cycle to track progress towards improvements instead. There was therefore no need to restrict what energy supply firms offered their consumers in terms of products or the price of energy charged (Littlechild 2019; Ofgem 2004b). Ofgem measures suggested that ex-monopoly providers had excessive market power, that consumers knew that they could switch supplier and that there were savings available in the energy market (Ofgem 2004b, 2004a).

The delivery of competitive markets by Ofgem was not a concern of Government energy policy between 2000 and 2007. Instead, Energy Acts simply expanded the statutory duties of the regulator to reflect reforms elsewhere in the economy - first in terms of better regulation in the Energy Act of 2004 and then in relation to sustainable energy in the Energy Act of 2008. There was, however, a concern regarding energy supplier behaviour with regard to disconnections of homes with energy debt, following a case of two pensioners dying after being disconnected by British Gas. As discussed in Chapter 1, this case resulted in significant concerns being raised in the press and in parliament (Akbar 2003; House of Commons Select Committee on Trade and Industry 2005). While its analysis indicated that the energy market was working well for domestic consumers, Ofgem did respond to the concerns raised by elected representatives and the public by undertaking a review (Press Association 2004).

Ofgem then conducted a review of Social Action Strategy (Ofgem 2005e) focused on energy supplier behaviour regarding debt and disconnection. This strategy noted that measures to support vulnerable energy consumers should be designed as far as possible to avoid the inhibition of competition. It went on to welcome a new self-regulatory safety net to stop vulnerable consumers being disconnected in the winter months. Ofgem reiterated that its role was to protect consumers by promoting competitive markets which kept prices as low as possible, drawing a distinction between its focus and that of poverty and social exclusion, which was for Government to tackle. The stance of distinguishing affordable energy as a concern for Government and the competitive market as the concern of the regulator, was reiterated at the Select Committee Inquiry on Debt and Disconnection (House of Commons Select Committee on Trade and Industry 2005). In line with its predecessor committees regarding the affordability of energy, the committee concluded that monitoring energy supply firms, particularly with regard to PPM

customers, should be sufficient, with broader concerns about accessing affordable energy to be the focus of Government fuel poverty programmes (House of Commons Select Committee on Business and Enterprise 2008; House of Commons Select Committee on Trade and Industry 2001, 2002; National Audit Office 2004). No changes in enforceable rules were therefore introduced by the energy regulator in 2005. Instead, the Social Action Strategy maintained four existing activities within the regulator: it ensured compliance with regulations by energy supply firms; it contributed to Government led debates on fuel poverty; it encouraged energy companies to consider debt prevention policies; and it considered how best to inform consumers about how to lower their bills. While the Social Action Strategy did not lead to any new regulations for energy supply firms, Ofgem began a review of their monitoring activities to measure debt prevention, in order to encourage good practice (Ofgem 2005e).

Alongside regular reporting regarding energy suppliers' activities relating to vulnerable consumers with Social Obligations reporting, retail market reports were subsequently published in 2005, 2006 and 2007 and confirmed Ofgem's confidence that the competitive retail market for domestic energy consumers was working well (Ofgem 2005a, 2006, 2007b) . This conclusion was shared by the House of Lords Committee on Regulators which concluded that utilities regulation was working well, with the exception of water regulation which had not yet adopted a path to a competitive retail market (House of Lords Select Committee on Regulators 2007). This conclusion was shared with the public in January 2008 in a press release named "Market is sound—Ofgem assures Chancellor"(Ofgem 2008e).

The conclusion drawn in January 2008 by the regulator articulated a confidence reiterated throughout the period 2000 to 2008. The view that the retail market in energy was a success was shared by elected representatives in Government and Select Committees over this period. The regulator permitted uncapped electricity

and gas prices in the domestic energy supply market and explained that this had not damaged competition. Instead, the measures used to define good competition for consumers - that there were choices which meant savings could be made and an awareness of how to engage with the market - showed success. However, as I go on to describe in the section below, by the end of 2008, the consensus that the competitive retail market was working well for consumers was broken.

4.2.2. Regulatory policies to accelerate the benefits of a competitive retail market 2008 - 2012

When energy prices rose in 2008 the Chancellor of the Exchequer criticised profits made by energy firms and included a demand that energy supply firms voluntarily commit to £150 million a year to supporting their most vulnerable customers for three years in the 2008 budget (Ofgem 2008f). Then, less than a month after its buoyant press release, Ofgem announced the “Energy Supply Market Probe” (Ofgem 2008b). The Energy Supply Market Probe, explained Ofgem, responded to public concerns regarding the energy market and set out to evaluate the energy market in terms of supplier market shares, energy prices (both retail and wholesale), barriers to entry for companies trying to enter the energy supply market and consumer experiences of the market. The intervention of the Chancellor of the Exchequer was not, however, noted. Ofgem noted that it expected the full cooperation of energy supply firms in responding to the concerns raised in the Energy Market Supply Probe and that the alternative to Ofgem’s own review was a referral to the Competition Commission (Ofgem 2008b, 2009f). Further, Select Committees in the House of Commons raised their own concern regarding energy affordability and encouraged Government fuel poverty policies to raise ambition in responding to the challenges (House of Commons Select Committee on Business and Enterprise 2008; House of Commons Select Committee on Work and Pensions 2008). However, consideration of regulation did not raise concerns about competitive markets as a cause of energy

affordability challenges. Instead, the Select Committee inquiry on “Energy prices, poverty and profits” supported the scope of the Energy Supply Market Probe in its focus on ensuring domestic consumers could access accurate information, face low barriers to switching suppliers and move between different types of products (House of Commons Select Committee on Business and Enterprise 2008).

On the basis of analysis conducted as part of the Energy Supply Market Probe, Ofgem concluded that competitive markets had developed well but that the transition from monopoly provision to fully competitive retail markets needed to be accelerated in two areas - price differentials and the lack of market engagement from some consumer groups (Ofgem 2008d). Government ministers agreed with this assessment but argued that Ofgem’s focus on competitive markets as the primary manner in which domestic energy consumers should be protected, was not sufficient (Miliband 2009). The Government therefore introduced the Energy Act 2010 which gave the Secretary of State the power to instruct Ofgem to control energy supply firm’s tariff offerings to domestic consumers and communications regarding prices (Energy Act 2010). Further, the Energy Act of 2010 introduced a new procedural step to consider using solutions to address consumer detriment instead of, or alongside, measures to promote competition.

Ofgem did, however, describe a scope of intervention that would meet the concerns articulated by the debate surrounding the Energy Act and described new regulations regarding price differentials and an increase in market engagement (Ofgem 2009f). First, Ofgem concluded that there were four areas concerning: price premiums to consumers who were in the “home” area of an ex monopoly provider; electricity only contracts; PPMs and contracts purchased offline (rather than signing up using the internet). Ofgem was concerned because the price differences identified in their analysis did not reflect differences in cost between providing services (Ofgem 2009g). Ofgem therefore proposed new regulations to ensure that

energy supply firms provided information that would prompt consumers and reduce unfair price differentials. In order to evaluate whether price differentials were unfair, Ofgem considered four market interventions: a price cap, a ban on cross subsidies between deals, a ban on discrimination based on being located in an ex monopoly provider area and a ban on price differences that were not cost reflective (Ofgem 2009g). Ofgem concluded that it would act to stop undue discrimination and implement new supply licence conditions to ensure that the only differences between prices were based on cost (Ofgem 2009a) . This specifically banned the practice of charging a higher price to customers who were within the “home” area of ex monopolies’ historic geography. That is, the region where an energy supply firm had been a monopoly provider before privatization. Ofgem noted that the cost reflective nature of pricing should be a feature of a fully functioning competitive market and therefore, added a sunset clause to the new rules (Ofgem 2009b).

Second, the Energy Supply Probe concluded that not all consumers were fully benefiting from market engagement and that there were concerning differences between some prices (Ofgem 2008d). Three groups were identified by Ofgem as least likely to benefit from competitive markets in 2008. The first group were older people who had often never switched their energy supplier and were unlikely to compare prices online to secure the best deals. The second were low income groups who did switch supplier but through face to face salespeople who did not accurately compare offers, so were unlikely to access the best deals. Further, low income groups were less likely to pay by direct debit and more likely to use PPM, thereby paying the associated higher prices. Further, low income groups might not be able to switch if they were in debt with their current supplier, due to caps relating to the amount of debt allowed to be outstanding when a consumer switched supplier. The third group were consumers in rural locations off the gas grid who did not benefit from products with a discount for being supplied with both electricity and

gas and were therefore unable to secure some of the lowest prices available in the energy market for domestic consumers.

In order to accelerate market engagement by all groups, Ofgem argued that new regulations were needed to ensure energy suppliers provided an annual overview of energy costs with a prompt to engage with the energy market (Ofgem 2009f). There were two areas where Ofgem sought improvements from energy supply firms but did not set out to change rules (Ofgem 2009f). Firstly, Ofgem noted that a voluntary code of good practice coordinated by the Energy Retailers Association - the industry body representing energy supply firms - regarding sales procedures had not resulted in a significant enough improvement across the industry. Therefore, an overarching set of guidelines that set out the principles of treating customers fairly and more reliable procedures for switching supplier would be encouraged through a preamble to the supply licence drafted by Ofgem and a good practice code. New rules were, however, needed to ensure that salespeople provided accurate information to consumers who were considering switching. The new rules to instruct energy supply firms on information would empower consumers to make well informed decisions. However, not all of these rules would be within the energy supply licence, which could result in any rule-breaking activity being fined by the regulator. Instead, only the provision of an annual prompt to switch supplier and its layout and the rules for face to face salespeople were added to the licence. Secondly, the rules that were considered in the review regarding switching with a debt when paying via a PPM and the rules governing prices changes could need changing, Ofgem argued, but would be the focus of future reforms (Ofgem 2011g).

Against the backdrop of these concerns regarding the energy market, Ofgem reviewed the conduct of energy suppliers with regard to debt and disconnection procedures in a separate programme of work (Ofgem 2008a). It concluded that strong progress had been made in protecting vulnerable consumers from

disconnection by their energy supply but concluded that there was some concerning inconsistencies in approach between energy supply firms, despite an industry association voluntary code (Ofgem 2009h). In 2009, in partnership with the consumer advocate, Ofgem proposed that ongoing monitoring of energy supply firms and the voluntary code was sufficient in most areas, with two exceptions (Ofgem 2009h). The first exception was the proactive identification of vulnerable customers during the procedures related to debt collection and disconnection from energy supply. The second was the reconnection of a home that had been disconnected in the summer before the winter months. Though Ofgem stated that both of these factors were implicit within the existing supply licence, the extent of the inconsistencies between energy suppliers in acting in line with their expectations meant that new wording in the supply licence conditions was required. The change was to include the explicit requirement that energy supply companies proactively identify vulnerable consumers (Ofgem 2010e). The voluntary code of conduct and the existing rules were articulated as sufficient while further consideration of the need for regulation was conducted (Ofgem 2009h). The conclusion of this review over a year later was that a new licence condition was required to clarify that an energy supply firm must check the circumstances of a domestic energy customer before disconnecting their energy supply (Ofgem 2010c). However, this rule did not secure a reconnection timeline or prescribe the proactive identification described in the initial review (Ofgem 2009h).

Ofgem concluded the Energy Supply Probe noting that the best way to deliver positive outcomes for energy consumers was to ensure that there was a vibrant market (Ofgem 2009f). The reforms described focused on improving the functioning of the market overall but in particular for vulnerable households. However, Ofgem concluded in 2010 that the reforms proposed by the Energy Supply Market Probe did

not result in the level of acceleration of access to the benefits of a competitive market that was required (Ofgem 2010f).

In 2011, Ofgem published a set of proposals that included radical reforms for the domestic energy market: the Retail Market Review (Ofgem 2011h). These reforms noted increasing concerns regarding the increasing price of energy to domestic consumers. The Retail Market Review would, argued Ofgem, make competition work more effectively so that its benefits could be realised by consumers. While this had also been a concern identified by the Energy Market Supply Probe, Ofgem's evaluation in 2011 identified that only the rules in enforceable licences regarding price differentials had made an impact. The remaining changes - rules of the information provided by salespeople and unenforceable guidance on treating customers fairly - had not led to improvement to consumer engagement. In fact, engagement in the energy market by consumers had deteriorated under key metrics on making effective choices (Ofgem 2011h) . Noting that consumers had found it difficult to make a well-informed choice of supplier, Ofgem proposed new rules of tariffs and information provision. This included a cap on the number of tariffs that could be offered by an energy supplier and a restriction to the design of that tariff and more prescriptive rules around the provision of information about tariffs (Ofgem 2011h, 2012o). Finally, having concluded that unenforceable guidance introduced in 2009 had not had an impact on energy suppliers' activities, the overarching standards of conduct relating to treating customers fairly were added to the supply licence. Following a consultation procedure, Ofgem published updated proposals in 2012 with an initial scope of new rules that would limit each supplier to four tariffs and that each tariff would have no more than two types of charges (Ofgem 2012k). To make comparing this limited number of tariffs easier, each supplier would have to provide information annually to prompt their customers to switch. This proposal had the explicit backing of the relevant Select Committee,

that argued in 2012 and 2013 that change was needed and that Ofgem's approach was sensible (House of Commons Select Committee on Energy and Climate Change 2011, 2012). The Government's position was less sanguine, with the Energy Act of 2013 taking powers to deliver the Retail Market's Reviews proposals on reforming tariffs if Ofgem's implementation was delayed (Energy Act 2013).

Ofgem argued in 2012 that due to an increase in affordability challenges in households it was more important than ever that consumers were able to shop around to find the best deal (Ofgem 2012i). The final proposals of the Retail Market Review included seven adaptations of existing rules and five new licence conditions - a significant increase in the number of regulations proposed by a single review, which resulted in a prescriptive standard that energy suppliers were to implement. Ofgem concluded its review stating that its proposals made it radically easier for consumers to make better choices about their energy supply.

In addition to reforms in the way in which customers could interact with the energy market, Ofgem also reviewed its approach to protecting vulnerable consumers in 2012. It argued that its approach set out in the Social Action Strategy of 2005 required development in the context of the Equalities Act of 2010 (Ofgem 2012h). The strategy focused on promoting best practice among energy suppliers, ongoing research insight at Ofgem and innovative approaches to advice provision. Ofgem also noted that as the energy regulator, it had a role in sharing energy market expertise with other organisations and institutions with regards to the affordability of energy. Ofgem set out the idea of a network to connect with grassroots organisation and with other sectoral regulators. The strategy did not, however, recommend any new rules to protect energy consumers (Ofgem 2012h, 2013c). Instead, Ofgem noted that they would assess the outcomes of existing rules in line with the overarching attempt to simplify the licences that governed the activities of energy supply licences. Ofgem concluded that a new overarching definition would

frame their work in vulnerable consumer activities in terms of priorities and assessment of interventions (Ofgem 2013c). The new definition adopted was “when a consumer’s personal circumstances and characteristics combine with aspects of the market to create situations where he or she is: significantly less able than a typical consumer to protect or represent his or her interests in the energy market, and/or significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial.” (p12, Ofgem 2013a). Ofgem described that the new definition included the six characteristics of consumers in the Utilities Act, alongside a further 28 considerations for energy supply firms (Ofgem 2013c). These are described in Table 4.1.

Table 4.1 Energy vulnerability factors considered by Ofgem

Utilities Act 2000	Vulnerable Consumer Strategy (2013)			
	Personal circumstances	Property	Capacity to protect or represent own interests	Equalities Act (2010)
Age - over 65	Living alone	Living in a rural area and off the gas grid	Living with physical health issues	Age
Age - under 5	Not having internet access	Living in private rented accommodation	Living with mental illness	Disability
Has a chronic illness	Being on a low income	Living in a cold, inefficient home	Suffering from a cognitive impairment	Gender reassignment
Lives in a rural location	Being unemployed or being made redundant		Having a learning disability	Marriage and civil partnership
Low income	Being a full-time carer		Literacy or numeracy difficulties	Pregnancy and maternity
Disabled	Being a lone parent		Having a speech impairment	Race
	Leaving care for the first time		Not speaking English as a first language	Sex
	Experiencing relationship breakdown			Sexual orientation
	Experiencing bereavement			Religion or belief

As a result of the procedures of developing the Consumer Vulnerability Strategy (2013), Ofgem concluded that its first priority from the strategy for their work with energy supply companies was to ensure that consumers were identified as vulnerable by adding customers to the Priority Services Register - a scheme to provide additional services to vulnerable consumers. Further, Ofgem looked to review what support might be needed for consumers in vulnerable situations to ensure there was suitable support to access the energy market.

The period 2008 to 2012 saw a significant increase in regulatory activities to intervene in the retail energy market in GB. As described in this section, this saw new rules introduced regarding the number of tariffs energy supply companies could

offer, how those tariffs were designed and how they were described to consumers. Further, the consensus that the GB retail energy market was working well for domestic consumers had broken down, with Government introducing powers to allow the Secretary of State to intervene if the benefits of the competitive market were not accelerated. However, key features of energy regulation were maintained from 2000. Specifically, the desirability of a competitive market as a mechanism to reduce energy prices was maintained. Further, the separation of affordability as a concern for Government as distinct from regulation of the market continued (Ofgem 2013c). Competitive retail markets were still the focus of energy regulation - the difference in this period was that regulation focused on accelerating the market's reach (Ofgem 2009f, 2011h). However, despite the regulatory activities regarding the provision of information to all consumers in the retail market and a redesigned Vulnerability Strategy, Ofgem did not see an acceleration of all domestic consumers benefiting from the competitive market (Ofgem 2013e).

4.2.3 Regulatory policies to review GB retail energy market regulation 2013 - 2016

In spite of the major regulatory changes between 2008 and 2013 described above, the impact on the energy market appeared to be minimal (Ofgem 2014a). Instead, Ofgem referred the energy market to the Competition and Markets Authority (CMA) three months after the Retail Market Review reforms took effect. Citing the review of the energy market conducted jointly with the CMA and the Office of Fair Trading - the State of the Market Report 2014 - Ofgem argued that six years of regulatory reforms under the threat of a referral to the Competition authorities had been insufficient (Ofgem 2014a; Ofgem, Office of Fair Trading and Competition and Markets Authority 2014). The wide reaching referral had two elements that considered residential consumers: whether ex monopoly energy companies had a

market advantage that led to them being able to charge high prices and weak consumer response to available products in the energy market (Ofgem 2014a).

In 2014, the CMA published its scope, which was to investigate which features of the energy market in GB could have had an Adverse Effect on Competition (AEC) (Competition and Markets Authority 2014). This included a consideration of whether energy supply firms faced weak incentives to compete on price, given that there were a large number of inactive consumers who did not engage in the market. The CMA considered three possible sources of weak incentives to compete: regulatory interventions by Ofgem, poor behaviour of energy supply firms and domestic energy consumer inactivity in the energy market. After its two-year investigation into the energy market, the CMA concluded that all three sources contributed to weak incentives for energy supply firms to compete.

First, Ofgem's regulatory interventions had damaged the competitive market (Competition and Markets Authority 2015b). In the Governance AEC, the CMA pointed to the undue discrimination of the Energy Supply Probe and tariff simplification from the Retail Market Review as particularly damaging regulatory outputs (Competition and Markets Authority 2015a; Ofgem 2013k). In its final report, the CMA highlighted two important contributing factors in the regulatory outputs that damaged competition: a lack of rigorous analysis by Ofgem and the role of energy supply firms in developing the rules that governed the industry. Instead of robust policy procedures focused on delivering competition, the CMA identified energy supply firms shaping key industry procedures through code governance (Competition and Markets Authority 2016b). Further, robust decision-making at Ofgem was weakened by a political debate on direct intervention by the Secretary of State, in the Energy Acts of 2010 and 2013 respectively (Energy Act 2010; Energy Act 2013). The CMA therefore recommended that the policy making

responsibilities between the Department of Energy and Climate Change (DECC) and Ofgem should be made clearer.

Second, the CMA considered that the impact of energy supply firms' behaviour on weak consumer responses resulted in an adverse effect on competition (Competition and Markets Authority 2015b). The CMA concluded that the ex - monopoly providers were able to charge higher prices to inactive consumers and had been doing so (Competition and Markets Authority 2016b). This problem was particularly significant for consumers who had a PPM. PPM consumers were less likely to switch and faced additional complexities in switching supplier, relating to the amount of energy debt they were using their meter to repay. Further, the PPM market was constrained by infrastructure that only allowed for a capped number of tariffs to be offered. This meant that PPM consumers did not have access to as wide a variety of innovative products as other consumers may have had. The CMA therefore introduced a new price cap - the first since 2002 - for all PPM consumers, until they received a meter that was connected to new infrastructure which allowed a fully competitive range of deals (Competition and Markets Authority 2016e). Further, the CMA encouraged Ofgem to review the experience of PPM consumers switching with a debt, in addition to the reforms delivered in 2015 that increased the amount of debt a PPM consumer could be in and switch supplier (Competition and Markets Authority 2016b; Ofgem 2015i).

Third, the CMA considered the impact of consumer decision-making on the competitive energy market (Competition and Markets Authority 2015b). The CMA concluded that in order for the competitive market in energy to be a success, consumers needed to engage with the market more by switching supplier. Ofgem reporting at this time described that while consumers were aware that they could switch supplier, there had been very little change in the number who did so (Ofgem 2015j, 2016b). The CMA therefore introduced new rules for consumers with complex

metering types to be prompted to switch supplier and for a new database to be set up of all inactive consumers. Inactive consumers on this database would receive communications on the deals available in the energy market with advice on how to switch supplier (Competition and Markets Authority 2016d, 2016f). However, the investigation did not conclude that the market structure had enabled any cartel-like behaviour in price setting (Competition and Markets Authority 2015b). In fact, the retail market for domestic consumers showed features of a well-functioning, mature market in that it had a range of energy suppliers offering a range of products (Competition and Markets Authority 2016b).

During the investigation by the CMA, regulatory policy debates focused on analysis and publications. There were therefore few other regulatory events. There were no further statutory powers granted to Ofgem in legislation and the Select Committee on Energy and Climate Change focused on articulating the importance of price comparison websites and clear communications from energy supply companies in its recommendations (House of Commons Select Committee on Energy and Climate Change 2013, 2015). In this context, Ofgem's activities were predominantly focused on interacting with the CMA's investigation. There were two exceptions: its vulnerability strategy and the initiation of a review of how it regulated the retail energy markets (Ofgem 2015e, 2016j, 2016e).

First, in 2015, Ofgem reviewed its progress in relation to the aims of its Consumer Vulnerability Strategy of 2012 (Ofgem 2015e). Ofgem concluded that it needed to extend the strategy to incorporate its new role in administering government social programmes, as set out in the Energy Act of 2011, but that the priorities and approach remained consistent with its 2013 Consumer Vulnerability Strategy (Ofgem 2013c, 2015e). The area that was prioritised from reviewing progress on the Vulnerability Strategy in 2015 was in relation to PPM consumers (Ofgem 2015e). Ofgem considered how to ensure PPM customers could access more competitive

tariffs and ensure that they were treated fairly by energy supply firms (Ofgem 2015i). Explaining that the CMA had signalled that their recommendations were likely to include recommendations in the PPM market, Ofgem concluded that they would focus on two topics: a voluntary code to allow PPM Consumers to switch even when they had a debt to an energy supplier (Ofgem 2015f) and the charges when energy supply companies installed a PPM without the consent of a customer (Ofgem 2015i, 2016f). Ofgem's decision was to ban installation of a PPM without consent, where doing so would exacerbate vulnerability and to cap the charge an energy supplier could apply to a customer's bill for the installation of a PPM (Ofgem 2016h, 2016f).

Second, Ofgem noted the CMA's work in identifying that Ofgem's prescriptive rules had resulted in an adverse effect on competition and launched a consultation on moving to principles-based regulation (Ofgem 2016j). Operating under principles, energy supply firms would need to work out what consumers needed rather than follow a set of tick boxes from the regulator, focusing instead on outcomes that should be achieved. This new way of regulating, argued Ofgem, would future-proof regulation and deliver what was right and fair for consumers. Ofgem noted that the change would result in better protection for consumers as it would allow them to benefit from innovation but ensure that energy supplier poor behaviour was reduced. Further, Ofgem argued, principles-based regulation, which removed unnecessary prescriptive rules, represented better regulation. In December 2016, Ofgem published the conclusion to this review in a "Regulatory Stances" statement (Ofgem 2016e). This statement set out to clarify to external stakeholders the approach Ofgem intended to take when undertaking its activities. In discussing the supply market, Ofgem confirmed that effective competition should be promoted to deliver for consumers. In a separate section on consumer vulnerability, Ofgem noted that it needed to act to protect the interests of consumers in vulnerable

situations and would continue to deliver its Consumer Vulnerability Strategy (Ofgem 2013c). The strategy described in setting out an intention to use principle based regulation to encourage a flourishing competitive market returned to the logic set out in Ofgem's 2001 decision to cease price regulation (Ofgem 2001b). Ultimately, consumers would benefit most where innovating firms competed to drive down energy prices and the regulators role was to support the operation of the market (Ofgem 2001b, 2016e).

In the period 2013 to 2016, regulatory activities focused on reviewing the implications of the rules that set out the structures of the retail market for domestic consumers. This review saw the retraction of many of the reforms introduced between 2009 and 2012, in order to re-establish the competitive market structure introduced in 2002. Reforms for domestic energy consumers focused most on the provision of information to consumers in order to enable accurate decision-making. One significant exception was the intervention to limit the charges for PPM consumers, both in terms of prices and installation costs. However, neither of these reforms related to the campaigning regarding the impact of these charges on PPM consumers themselves. Instead, the CMA and Ofgem focused on the lack of competitive pressure in these areas, meaning regulation was required until the PPM infrastructure was changed to allow a fully competitive market (Competition and Markets Authority 2016e; Ofgem 2016h).

4.3 Conclusion

This thesis began by pointing to the gap in expectations between a market regulator focused on competitive prices and the public and their representatives on energy affordability. In presenting this account of regulatory policy formulation between 2000 and 2016, I have identified that this gap in expectations is rarely visible in regulatory outputs between 2000 and 2016. It is notable that the main feature of

the entire period of 2000 to 2016 is not a difference in expectations between market regulators on the one hand and elected representatives on the other. Instead, there is a remarkably consistent consensus on the overarching arrangements that dictate access to affordable energy - a competitive retail market. Indeed, the consensus predominantly extends from an agreement that a competitive retail market is the correct arrangement, to consensus that the GB energy market has most of the features of a well- functioning market (House of Commons Select Committee on Energy and Climate Change 2012; Ofgem 2004b, 2008d, 2012k). Disagreements regarding the policies to deliver affordable energy instead focus on the Government's fuel poverty policy and its support for affordable energy through improvements to the fabric of homes rather than market arrangements and the behaviour of some energy supply firms (House of Commons Select Committee on Business and Enterprise 2008; House of Commons Select Committee on Energy and Climate Change 2013; House of Commons Select Committee on Trade and Industry 2001, 2002, 2005) . As there was broad consensus that the retail energy market was structured in an optimal manner, regulatory outputs focused on energy supply firms to conduct the procedures that enabled consumers to switch suppliers and ensure the market operated as it should (Ofgem 2003c, 2010c, 2011g, 2011h, 2015f). That their approach to regulating energy supply firms followed the principles described by Government that unnecessary regulation is a burden on innovation and should therefore be avoided, is noted regularly in Ofgem regulatory outputs in this period (Ofgem 2003c, 2008a, 2009b, 2012e, 2012h, 2013c, 2013g, 2014a, 2016e). Instead, Ofgem used a combination of good practice guidance, encouragement of voluntary codes of conduct by industry, in addition to enforceable rules (Ofgem 2003c, 2008a, 2016e).

There were three points at which the gap in expectations regarding access to affordable energy was visible and the consensus that the market was working well

broke down: in 2008, 2010, 2014. On each occasion, the structure of the retail market was reformed by regulators by considering competitive outcomes (Competition and Markets Authority 2014; Ofgem 2008b, 2009f, 2010f, 2012i). While each period can be broadly considered to have focused on a different set of regulatory activities - introducing the market, accelerating its benefits and reviewing its structure - all maintained the focus on the competitive market as the procedure to deliver positive benefits to domestic consumers. Even where legislation was introduced to provide powers to the Secretary of State to intervene if the regulator did not do so (Energy Act 2010; Energy Act 2013), these powers were not used before the end of 2016. The role of price in energy affordability was known but not accepted to be the focus of regulatory activities; instead, it was the responsibility of Government (Ofgem 2000b, 2005e, 2007c, 2008f, 2013c, 2015e). At each of these three points - 2008, 2010 and 2014 - the regulatory activities that followed discussed, to some extent, fairness (Ofgem 2009g, 2010f, 2013g, 2016e, 2016j). The Energy Supply Market Probe included a consultation on unfair pricing differential. The Retail Market Review Incorporated Standards of Conduct into the supply licence to ensure customers were treated fairly. Ofgem's Regulatory Stances document of 2016 included an aim that outcomes were right and fair. However, this is not in line with the articulation of fairness that is invoked by the campaigns noted in Chapter 1 and in Energy Justice scholarship in terms fair access to affordable energy services (Simcock et al. 2016a; Walker and Day 2012). Instead, the Ofgem consultation on unfair pricing differentials in the Energy Supply Probe was followed by a consultation on undue discrimination - the economic definition of costs are inappropriate when they are not connected to the energy user who causes those costs to a supply firm (Ofgem 2009g, 2009a, 2009b) . The Retail Market Review insisted that energy supply firms must not unfairly hide accurate information and used trust in energy suppliers as a measure of whether energy

suppliers were acting fairly (Ofgem 2013g, 2015j, 2016b). Finally, right and fair outcomes for consumers in a market are not necessarily those articulated as fair by justice campaigners who discuss a right to energy services in the home (Day et al. 2016; Gillard et al. 2017; Halff et al. 2014; Sovacool 2013). These differences in conceptions of fairness and their implications for the different ways that consumers might be known in energy market regulation, form a central part of subsequent chapters in this thesis.

It is clear that regulatory activities regarding energy market regulation at Ofgem were focused on understanding consumers and the way that they engaged with the market. However, there was a logistical separation between regulatory activities that considered consumers in the market and another entirely distinct group of ‘vulnerable’ consumers. That protecting some consumers was inevitable was accepted in regulatory activities but such protections was not to undermine the competitive retail market in its development or delivery (Ofgem 2000b, 2005e, 2013c). This separation had important implications for influences on way that consumers are known in market regulation and therefore implications for answering the research question “What role did knowledges of ‘consumers’ play in the formulation of GB energy market regulation between 2000 and 2016?”. The analysis in subsequent chapters evidences this. I begin by applying the EJF to reveal the injustices in the energy market regulation between 2000 and 2016.

Chapter 5 - Energy Justice Analysis of Energy Market Regulation in Great Britain 2000 - 2016

5.1 Introduction

The political and public narratives of the energy market between 2000 and 2016 raised significant concerns regarding the fairness of access to affordable energy. The extent to which the energy market could be described as fair can be analysed using the Energy Justice framework (Deller et al. 2018; K. Jenkins et al. 2018; Simcock 2016). By conceptualising fairness in energy markets as energy justice, I undertook an analysis underpinned by the interacting features of procedural, recognition and distributional justice. Further, by adopting a framework that specifically sets out to identify the way in which energy policy procedures understand diverse energy needs, I illustrate the influence the different ways of knowing consumers had at Ofgem between 2000 and 2016.

Each of the three features of energy justice provides a different lens through which to examine the features of regulatory policy making in Great Britain that might contribute to the justness of energy market regulation. As described in Chapter 3, the full corpus of documents and interviews was coded against the concepts of distribution, recognition and procedural justice. In each of the sections below, I present the findings from my analysis against each of the individual pillars before outlining their interaction between 2000 and 2016.

5.2 Distributional Justice

The third and final pillar of the energy justice framework is distributional justice. Energy Justice scholarship, in line with Environmental Justice concerns, focuses on identifying the way that benefits and harms of energy policies are distributed within society (Jenkins et al. 2016; Schlosberg and Collins 2014; Sovacool 2013). In the context of affordable energy in GB, there were two related areas with consequences for the distribution of the benefits and costs associated with energy prices. Firstly, there is the access to the distribution of funds related to ensuring that particular groups have access to affordable energy services through funded programmes (Bouzarovski and Simcock 2017; Walker and Day 2012). The distributional justice of funds related to GB programmes to increase access to affordable energy services were not incorporated into regulatory policy outputs between 2000 and 2016. Instead, formal regulatory outputs explained that Ofgem oversaw the distribution of funds in line with criteria set out by Government policy makers (Department of Energy and Climate Change 2015b; Ofgem 2014h). The second element of distribution - access to low prices secured through market engagement - was the focus of three regulatory policy procedures which are described in the sections below.

5.2.1 Ofgem Energy Supply Market Probe

The Energy Supply Market Probe was an evaluation of the GB Energy Market conducted by the regulator, Ofgem (Ofgem 2008b, 2008d, 2009f, 2009g, 2009a, 2009b). As described in Chapter 4, the announcement coincided with a period of concern regarding the prices charged to people using energy in their home by energy supply companies. The initial report which opened the Energy Supply Market Probe stated:

“Concerns have been expressed about the operation of Great Britain’s gas and electricity retail supply markets for domestic and small business consumers. These concerns are heightened by recent price increases, caused by hikes in global fuel prices. It is even more important that retail markets work well when prices are as high as they are now.

Overall, the transition from monopoly gas and electricity supply ten years ago to competitive markets is well advanced and continuing to develop. Many consumers have benefited from lower prices, better service and a wider range of deals on offer.”

(Ofgem 2008c, p. 2)

This quote explains the position of Ofgem throughout the consultation procedures that ran from 2008 to 2009: that the introduction of competitive retail markets in GB was a success and that consumers were benefiting from the existing market structures (Ofgem 2008b, 2009f). However, there were regulatory outputs from the Energy Supply Market Probe that considered and responded to the distribution of costs and benefits of the energy market from 2000 to 2008 regarding the allocation of costs and the pricing between geographical areas. Before 2008, the way in which different prices were offered were based on the costs associated with each associated product (Ofgem 2005b). This meant that there were higher prices for those in particular geographical areas, with particular metering types and who were identified as posing a risk of unpaid debt (Ofgem 2009g, 2009d). The costs associated with serving these customers were seen to be sufficiently similar to require the same level of prices per unit of energy, with no additional surcharges (Ofgem 2005b). However, in 2009 in their consultation on Unfair Pricing Differentials, Ofgem argued:

“One of the key findings of Ofgem’s recent Probe into GB retail energy markets was that, despite the market working well in many important respects, a significant number of consumers remain disadvantaged by persistent unfair price differentials and that vulnerable consumers are disproportionately affected... In considering action in this area by way of licence change, we aim to guard against the most harmful effects of unduly discriminatory pricing on consumers whilst being concerned not to hinder innovation or the further development of competition...We would need to be sure that such a condition is a proportionate measure and serves to help, rather than hinder, progress towards an effective competitive market.”

(Ofgem 2009e, p. 3)

This quote explains the tension implicit throughout the consideration of intervention under the Energy Supply Market Probe consultations: the identification of harm to some consumers, particularly those who are vulnerable, but a limitation to actions regarding any distributional interventions that would pose a risk to the competitive market in GB (Ofgem 2008d, 2008d, 2009f).

As described in Chapter 4, the regulatory output from the Energy Supply Market Probe was the removal of price differentials between consumers on Pre- Payment Meters (PPMs) and those who paid their bill in arrears quarterly and between consumers who lived within an energy supplier’s ex-monopoly region. In terms of distribution of the costs and benefits of the market, the former aimed to reduce the price for consumers on a PPM were not the topic of further regulatory scrutiny. However, one interviewee noted that this subsidy of PPM became a feature of the energy market saying:

“You can use a broad definition which is anything that is not cost reflective is a cross subsidy. So, for example, we now have to subsidise PPM and indeed we did so previously”.

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The latter regulatory output, the policy to remove the price disparity in and out of ex-monopoly regions, saw the increase in prices for all consumers (Hviid and Price 2012), with no distribution of any additional benefits of lower prices to consumers. Further, the final output did not incorporate any of the narratives regarding fairness or pre-payment pricing, instead focusing on the calculation of undue discrimination between geographical locations, linked to ex-monopoly providers.

5.2.2 Ofgem Retail Market Review (2010 - 2012)

The Retail Market Review was launched following concerns that the outcomes of changes made to the Energy Supply Market Probe regulatory licence condition had not resulted in lower prices for people who used energy in their homes (Ofgem 2010f, 2011h, 2012k, 2012i). In particular, there was still a significant difference between prices for those who engaged with the market by switching energy supply firm and those who did not. This difference was sufficiently significant to result in discussions within the regulator of whether more significant regulation was required to prompt people who used energy in their homes to engage with the market. As the initial consultation report stated in 2012:

“Building on the findings of our 2008 Energy Supply Probe, Ofgem’s Retail Market Review has demonstrated that further action is needed to make energy retail markets in Great Britain work more effectively in the interests of consumers. Consumers are at risk from a number of features in the market which reduce the effectiveness of competition.”

(Ofgem 2011b, p. 2)

The outcome of the Retail Market Review was new regulations to make the comparison of different energy supply firms simpler (Ofgem 2013g, 2013k). Each energy supply firm was restricted to offering only four products and each one had to be described in a comparable way (Ofgem 2013k, 2013j). The proposed distributional outcome of this policy was to ensure that more people benefited from lower energy prices that were associated with market engagement. The Retail Market review stated:

“Our proposals on simpler tariff choices aim to make the market simpler and facilitate consumers’ ability to be aware, access, assess and act on information available to them. To be clear, our policy intent is that consumers should face fewer tariff choices to make comparisons between them easier.”

(Ofgem 2012d, p. 11-12)

Whether these outcomes would have occurred or if the lower prices would have been definitively removed from the market is unknown, due to the regulatory policies implemented following the Retail Market Review being overturned by the Competition and Market Authority who removed the regulation, arguing that:

“Overall, our finding is that certain aspects of the ‘simpler choices’ component of the RMR rules (including the ban on complex tariffs, the maximum limit on the number of tariffs that suppliers are able to offer at any point in time, and the simplification of cash discounts) are a feature of the markets for the domestic retail supply of electricity and gas in Great Britain that gives rise to an AER (Adverse Effect on Competition).”

(Competition and Markets Authority 2016a, p. 45)

The restriction to four tariffs per energy supplier may have, in time, resulted in more consumers engaging in the market and therefore securing the benefits of low prices. However, in the time it was in place, there was no evidence that new types

of consumers secured lower prices. The potential for a more distributionally just scenario, where the majority of consumers secured the benefit of lower energy prices, was therefore not a consequence of the Retail Market Review.

5.2.4 Competition and Markets Authority Energy Market Investigation (2013 - 2016)

The Competition and Markets Authority began an investigation into the GB energy market in 2013 following a referral from Ofgem (Ofgem 2014a). The wide-ranging review included investigating the different prices charged in relation to different products (Competition and Markets Authority 2015b). The three recommendations which had an impact on the distributional outcomes of the energy market related to: prices for people who paid for their energy using a PPM; the removal of regulations related to the Retail Market Review; and a specific programme to prompt people who had not recently switched energy supply firms to do so (Competition and Markets Authority 2016f, 2016e, 2016d).

These distributional implications were that the benefits of engaging with the market should be shared by more people who used energy in their homes. Of particular concern in the regulatory policy outputs of the Competition and Market Authority was the lack of choice for those on PPMs and the difference in prices for those who engaged with the market and those who did not:

“The options to switch are far more limited for the 4 million households on prepayment meters. For these customers, a transitional price cap will be introduced which will reduce bills by around £300 million a year...our view is that a combination of features concerning energy supply specifically to the prepayment segments gives rise to an AEC (Adverse Effect on Competition) through reducing suppliers’ ability and/or incentives to compete to acquire prepayment meter

customers and to innovate by offering tariff structures that meet customers' demand."

(Competition and Markets Authority 2016a, p. 43)

This led the CMA to conclude that PPM prices should be capped to ensure that they did not face prices that were not kept low by the effects of competition, until a new meter type was widely available. The distributional consequences were that those on PPMs secured lower prices and access to more affordable energy than would have otherwise been the case.

For consumers on all meter types, the distributional justice implications of the Competition and Markets Authority relate to the manner in which different costs were associated to different products:

"We have identified a combination of features of the markets for the domestic retail supply of gas and electricity in Great Britain that give rise to an Adverse Effect on Competition through an overarching feature of weak customer response.

Overall, our view is that the overarching feature of weak customer response gives suppliers a position of unilateral market power concerning their inactive customer base and that suppliers have the ability to exploit such a position through their pricing policies: through price discrimination by pricing their standard variable tariffs materially above a level that can be justified by cost differences from their nonstandard tariffs; and/or by pricing above a level that is justified by the costs incurred in operating an efficient domestic retail supply business."

(Competition and Markets Authority 2016a, p. 37)

For the first time, the CMA identified a scenario of probable cross subsidy where energy supply firms allocated costs specifically to the prices of those who did not,

or were unlikely to, engage with the energy market. This scenario had been described as a possible option for large energy supply firms by the Chief Executive Officer of a new energy company, OVO, who stated that if an energy company once held a monopoly position:

“You take all of your indirect costs, such as social, environmental and regulatory costs, and you put them on your sticky customers, because you know that you can charge them more than customers that switch, and then you offer really good deals to attract new business or to attract customers that are leaving”

(House of Commons Select Committee on Energy and Climate Change 2012, p10.)

This meant that those who did not engage with the energy market were likely to be paying energy prices that included the costs associated with their usage, the energy systems that ensured its delivery, policy programmes delivered by energy supply firms and costs associated with the provision of services to other people.

Specifically, those who did not engage with the market provided a cross subsidy to those who did. In its Final Report, the CMA explained that:

“The above overarching feature of weak customer response, in turn, gives suppliers a position of unilateral market power concerning their inactive customer base. In relation to unilateral market power, our finding is that suppliers in such a position have the ability to exploit such a position, for example, through price discrimination by pricing their SVTs (Standard Variable Tariffs) materially above a level that can be justified by cost differences from their non-standard tariffs and/or pricing above a level that is justified by the costs incurred with operating an efficient domestic retail supply business.”

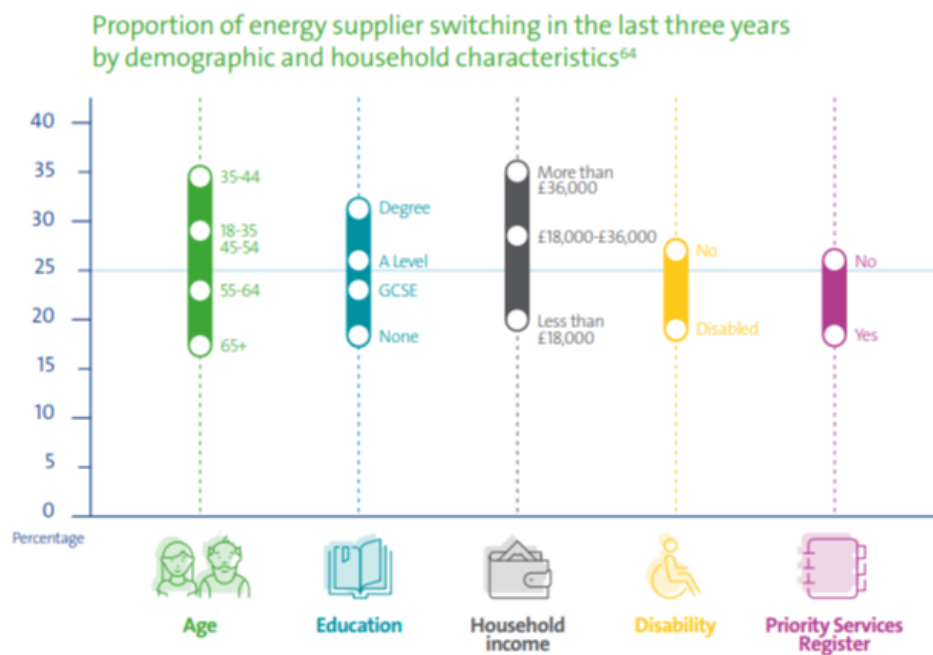
(Competition and Markets Authority 2016a, p. 595)

The CMA’s conclusion, as shown by Figure 5.1, was that higher prices were charged to those who did not engage with the market through switching. This distributional

concern regarding this outcome was heightened by evidence presented within the energy market investigation - which showed that those in vulnerable situations were least likely to engage with the energy supply market. The outcome, therefore, of the market up to 2016 was that more vulnerable households, such as those on low incomes, were subsidising lower energy prices for those who were not in vulnerable circumstances.

Figure 5.1 Demographic characteristics of who benefitted from the energy market

2016 CMA Energy Market Investigation findings visualised in “Consumer vulnerability: challenges and potential solutions” (CMA, 2019; p21)



The CMA investigation clearly identified who did and did not secure the benefits of the energy market structure between 2000 and 2016. A market structure which provided its lowest prices to those who engaged in switching behaviour meant that those who secured benefits were more likely to be of working age, have stayed in education the longest, have the highest incomes and not have a disability. Finally, those who were registered with their energy company as being in vulnerable circumstances were less likely to switch supplier to secure a lower price. This

distribution sees the least vulnerable in society secure lower prices for their energy.

5.2.5 Distributional Justice in GB Energy market regulation 2000 - 2016

My analysis of the period 2000 to 2016 identified three regulatory outputs that had the potential to impact the distribution of the benefits and costs of the energy supply market in Great Britain. The Energy Supply Market Probe, Retail Market Review and CMA Investigation each set out concerns that too few were benefiting from the low prices available to consumers who engaged with the market (Competition and Markets Authority 2015a; Ofgem 2008d, 2010f, 2014a). Each maintained a consistent focus on the need to ensure that consumers had the information required to make decisions when they engaged with the market. Further, each acknowledged that consumers who paid in advance for their energy through a PPM were least likely to benefit from lower prices that might result from competing energy firms. Only the regulatory output from the final procedures, the CMA investigation, went beyond providing information to consumers in a new way, by capping energy prices for those with a PPM. However, none of the regulatory outputs between 2000 and 2016 were sensitive to the demographic characteristics of those who benefitted from switching energy suppliers. Instead, the least likely people to benefit from the energy market were some of the most vulnerable groups in society (Competition and Markets Authority 2016b; Deller et al. 2018).

5.3 Recognition Justice

Recognition Justice is secured where diverse energy needs are understood, articulated and actioned in energy policies (Hurlbert and Rayner 2018; Lovell 2007; Schlosberg 2013; Walker and Day 2012). Between 2000 and 2016, Ofgem undertook a large range of activities in order to understand the needs of energy consumers,

acknowledging and understanding diverse energy needs through research that included large scale surveys and qualitative interviews (Ofgem 2004a, 2012f, 2013e, 2015j). The Competition and Markets Authority also undertook survey research to provide insight regarding energy-related needs as part of its Energy Market Investigation (Competition and Markets Authority 2016b). My analysis identified four significant opportunities for achieving recognition justice between 2000 and 2016. These were through the acknowledgement and understanding of diverse energy needs from the Consumer Vulnerability Strategy (Ofgem 2013c), the Consumer First Programme (Ofgem 2009e, 2015c), the Social Scheme Reporting (Ofgem 2008f, 2010d, 2011e) and Social Obligations reporting (Ofgem 2000a, 2015e).

5.3.1 Ofgem Consumer Vulnerability Strategy

The Consumer Vulnerability Strategy as a review of the enduring work of the regulator regarding vulnerable consumers (Ofgem 2013c) included a review of how the regulator ensured energy supply firms identified their vulnerable customers and the support measures that were therefore offered. The new proposals within this policy were that the regulator and energy supply companies adopt a dynamic concept of consumers in vulnerable situations. This new concept would include protected characteristics from the Equalities Act 2010, characteristics from Ofgem's statutory duties (Utilities Act 2000) and existing industry practice (Ofgem 2012h). In 2012, Ofgem explained that:

“As part of this Strategy, we propose to embed a more sophisticated understanding of the nature of vulnerability, which would in turn be reflected in our expectations of suppliers and distributors as a matter of best practice. This approach would recognise the dynamic and multi-dimensional nature of vulnerability, which may vary over time and in different settings as a result of their changing circumstances and capabilities.”

(Ofgem 2012h, p. 4)

This proposal would mean a significant extension of those who the regulator expected to receive specialist support from those energy supply firms that adopted insight into the diverse range of energy needs, in response to a definition of consumers in vulnerable circumstances. The content of this specialist support was not prescribed in the policy. However, the aims of the new definition were specifically articulated to encourage energy supply firms to provide a supportive structure in which people who used energy in their homes would articulate their energy needs to firm and the firm would respond to those needs.

The majority of these needs discussed within the strategy are focused on continued access to energy through the actions of energy distribution firms. How energy supply firms should respond to the needs identified was to be the aim of future discussions between industry, regulator and third sector organisations who worked with consumers in vulnerable situations.

“We will work with a range of stakeholders within the energy market and organisations outside of the energy market who deal with vulnerability issues. Engagement will allow us to learn from others as well as sharing our own perspective and insight.”

(Ofgem 2013c, p. 26)

The implication for recognition justice related to the Consumer Vulnerability Strategy (Ofgem 2013c), could serve as a positive example of distributive justice with support schemes distributing benefits to being extended to support those in need. Ofgem noted that:

“This Strategy prompts us to identify which consumers are more at risk in the energy market, in which situations are they at risk and, importantly, understand why. By better identifying the reasons why consumers are vulnerable in a

particular situation - rather than simply labelling them as “elderly” or “disabled” - we aim to better target our interventions.”

(Ofgem 2013c, p. 12)

However, identification did not automatically result in action to support a household. Instead, the willingness to reduce energy prices for vulnerable consumers remained the choice of energy firms (Ofgem 2012h, 2012f, 2013c).

Further, the costs of any support offered by energy supply firms were not allocated based on need for affordable energy (Ofgem 2013c, 2015e). Instead, the costs of supporting consumers in vulnerable situations was applied in accordance with the pricing decisions of energy supply firms. Further, the strategy did not impact the supply licence rules that ensured the action of energy supply companies in the period analysed by this thesis. Instead, firms were able to adopt the definition on a discretionary basis until 2017 (Ofgem 2015e).

5.3.2 Consumer First Research Programme (2007 to 2016)

One manner in which Ofgem sought to gain insight into energy consumers was the 2007 launch of an ongoing programme of commissioned research rather than ad hoc surveys. The programme included a survey with questions regarding perceptions of and engagement in, the energy market and a series of deliberative focus groups. During a Select Committee hearing in 2007 (House of Lords Select Committee on Regulators 2007), Sarah Harrison from Ofgem described the programme as responding to:

“... the changing horizon of consumer representation in the energy market and increasingly complex sets of decisions that the board has to turn to, particular in the area of sustainability, that are requiring us really to think about how shall we engage in the future with consumer interests, especially domestic consumers’

interests and how can we best understand those interests so we can contribute them to our thinking and our decision making.”

(House of Lords Select Committee on Regulators 2007, p. 82)

As explained by this description to the House of Lords Select Committee, the Consumer First Research Programme sought to build the understanding of consumers within Ofgem and include the interests of consumers in regulatory decision-making (House of Lords Select Committee on Regulators 2007). The Programme incorporated consideration of both the energy supply market regulation and energy distribution regulation powers of Ofgem. Insight from Consumer First was published by the regulator and cited during policy development procedures from its launch in 2007.

Despite its ongoing provision of research over time, it is not clear whether the understanding provided by the findings was consistently used in regulatory procedures for energy supply market regulation. The survey research findings were quoted in the logic for launching the market reviews in the Energy Supply Probe (Ofgem 2008d), Retail Market Review (Ofgem 2010f) and Competition and Markets Authority referral (Ofgem 2014a). However, the number of consumers reporting that they engaged with the energy market remained broadly consistent despite the regulatory policies that specifically sought to encourage more consumers to engage in the market (Ofgem 2004a, 2015a, 2016b). Further, there was limited visibility of the focus group findings within the regulatory outputs, as I demonstrate in Table 5.1.

Table 5.1 Consumer First Panel - Focus Group influence on energy regulation 2000 - 2016

Table lists Consumer First Panel reports along with citations in regulatory policy outputs

	Report Name	Cited in Regulatory Policy
1	Energy Market, Billing and Price Metrics (Ofgem 2009e)	Cited in Energy Supply Market Probe Remedies (Ofgem 2009f)
2	Tariffs Structures (Ofgem 2010b)	None cited
3	Supplier Standards of Conduct and Prompt Pay Discounts (Ofgem 2010a)	None cited
4	Energy Market and Tariff Structures (Ofgem 2011b)	Cited in Retail Market Review (Ofgem 2013k)
5	Consumer engagement with the energy market, information needs and perceptions of Ofgem (Ofgem 2012a)	None cited
6	Consumer views on Tariff Comparison Rates (TCRs) (Ofgem 2012b)	Cited in Retail Market Review (Ofgem 2013k)
7	Priority Services Register (Ofgem 2013b)	Cited in Consumer Vulnerability Strategy (Ofgem 2013c)
8	Change of Supplier Procedures (Ofgem 2013a)	None cited
9	Affordability, Environmental and Social Schemes (Ofgem 2014c)	Cited in Prepayment meters installed under warrant: final proposals (Ofgem 2016f)
10	Consumer engagement and trust in the energy market - Retail Market Review Reforms (Ofgem 2014d)	None cited
11	Third Party Intermediaries and Price Comparison Websites (Ofgem 2015d)	None cited
12	Exploring Trust and some Retail Market Review Remedies (Ofgem 2015b)	None cited
13	Switching Suppliers for Domestic Customers in Debt (Ofgem 2015c)	None cited

Of the thirteen deliberative focus groups discussing energy market regulation, only five were cited in regulatory outputs (line 1,4, 6 7 and 9 in Table 5.1). This suggests that the use of focus groups to understand energy needs was, at best, limited.

5.3.3 Social Scheme Monitoring

Between 2008 and 2016, energy supply firms delivered programmes of support on behalf of the UK Government to people who use energy in their homes. This included provision of discounts for energy bills and energy efficiency measures. The scope of the support provided was defined by the UK Government in terms of budget to be spent between 2000 and 2016. From 2010, the UK Government specified the targeting of support through the majority of these schemes. This incorporated the needs of two groups: households in fuel poverty needing housing fabric improvements; and bill reductions for low income pensioners. The period from 2008 to 2016 also saw an increase in the number of schemes designed by the Government, delivered by energy supply firms, under monitoring from the regulator. Table 5.2 below explains two key features: that there was only transparency of costing in two of the four energy bill funded assistance schemes and that those energy bill funded schemes offered a far lower level of support.

Table 5.2 Social Schemes to support energy consumers 2000 to 2016

Original table created with data from the Department of Energy and Climate Change, Ofgem, National Energy Action and the House of Commons Library (Department of Energy and Climate Change 2015a; House of Commons Library 2016a; National Energy Action 2019; Ofgem 2008f, 2010d, 2011e, 2015e)

	Cold Weather Payment*	Winter Fuel Allowance	Priority Service Register**	Warm Home Discount	Voluntary Agreement	Corporate Social Responsibility**
	Taxpayer funded		Energy bill funded			
	Department of Work and Pensions , UK Government		Statutory powers to Ofgem to monitor in GB		Energy Supplier designed with public reporting to Ofgem in GB	
2000	£25	£200	n/a			n/a
2001	£25		n/a			n/a
2002	£25		n/a			n/a
2003	£25	£200 - 300	n/a			n/a
2004	£25		n/a			n/a
2005	£25		n/a			n/a
2006	£25		n/a			n/a
2007	£25		n/a			n/a
2008	£25	£250 - 400	n/a		£100 - £250	n/a
2009	£25		n/a			n/a
2010	£25		n/a			n/a
2011	£25	£200 - 300	n/a	£135		n/a
2012	£25		n/a			n/a
2013	£25		n/a			n/a
2014	£25		n/a			n/a
2015	£25		n/a			n/a
2016	£25		n/a			n/a

* 0°C for seven consecutive days between 1 November and 31 March then a payment of £25 is made

** No public publication of costs to energy suppliers passed onto energy consumers

The procedures for monitoring the delivery of social schemes which responded to an understanding of energy related needs was conducted by Ofgem. However, the targeting decisions that related to responding to those needs did not inform the regulatory decisions. Instead, the monitoring of social schemes reflected the distinction between the mandatory scope from Government-designed programmes and the discretionary elements co-ordinated by individual energy supply firms. Monitoring against the mandatory scheme was made up of reporting against milestones, with fines for any energy supply firm that did not reach the relevant targets. While the social schemes were designed within the Department of Work and Pensions and the Department of Energy and Climate Change, initially, their operation and development sat within the energy regulator. The regulator was

entirely responsible for the scoping of the Voluntary Agreement between 2008 and 2010 and agreed the distribution of access to Warm Home Discount, with the exception of low-income pensioner households (Department of Energy and Climate Change 2015b). Support beyond the mandatory scope defined by government was encouraged but not prescribed within energy regulation (Ofgem 2000b, 2005e, 2013c).

It is therefore not consistently the case that the acknowledgement and understanding of energy needs that related to the experience of delivering social schemes contributed to recognition justice. Instead, the targeting of support focused on the group identified by the Government as most in need: low income pensioner households. Those outside of this group might receive the Cold Weather Payment or support through a Corporate Social Responsibility programme but this support was not based on insight into diverse energy needs developed within the regulator. Instead, formal regulatory procedures gathered insight regarding the impact of the schemes they monitored but did not, between 2000 and 2016, act upon this insight.

5.3.4 Social Obligations Reporting

Ofgem required energy supply firms to provide quarterly information on how each firm provided services to repay debt and identifies and registered some households as 'vulnerable' or 'in vulnerable circumstances' (Ofgem 2002, 2005e, 2013c). This reporting was published annually by the regulator alongside an analysis of provision of these services and any trends of concern to the regulator. Between 2000 and 2016, trends that were identified as concerning to Ofgem included disconnection for debt and the installation of PPM systems without consent. The analysis conducted by the regulator in the Social Obligations report described the needs of

households to access energy on an ongoing basis and therefore have continuous supply, while they had a debt to repay to an energy supply firm. The need to retain connection to an energy supply is described as particularly important to consumers who are identified as vulnerable. The need for continuous energy supply was reflected in the recommendation by the regulator that no registered vulnerable consumer should be disconnected from their energy supply. The Preventing Debt and Disconnection Report (Ofgem and Energywatch 2003) describes this situation stating:

“The industry responded via the Energy Retail Association (ERA) by introducing a safety net for vulnerable consumers. Suppliers have also worked to identify vulnerable consumers and all the major suppliers have signed onto and implemented the ERA commitment that vulnerable consumers will not be disconnected.”

(Ofgem and energywatch 2003, p. 4)

This recommendation was adopted into a voluntary code of conduct in 2004 (Energy Retail Association 2004). As the installation of a PPM without consent could also result in an interruption to the supply of energy, a further voluntary code of conduct was implemented in 2016 (Energy UK 2016). Under this latter code of conduct, a registered vulnerable consumer would not have a PPM installed without consent.

Social Obligations Reporting and its associated annual analysis by Ofgem between 2000 and 2016, provided acknowledgement and understanding of energy needs. However, there were two constraints to the extent that this secured recognition justice. Firstly, the resulting action was not prescribed by the regulator to respond universally to energy needs. The insight into the harmful practices of firms regarding debt collection and disconnection procedures did not lead to new

regulations that ceased poor practice. Instead, the choice to respond to these needs was at the discretion of individual energy supply firms. Secondly, the recognition of energy needs was associated with being identified and registered as being 'vulnerable' or later, being in a 'vulnerable circumstance' (Ofgem 2000a, 2005e, 2013c, 2015e). The procedures of securing this recognition was predominantly based on an individual declaring vulnerability and being registered onto the energy industry 'Priority Service Register' (PSR). The PSR could enable recognition justice as it is was a register that included information regarding specific characteristics linked to energy need, such as medical equipment which requires a continuous energy supply. However, Ofgem noted that only a minority of those who could be registered on the PSR did so (Ofgem 2013c) . This restricted the extent to which the energy needs of people were recognised.

5.3.5 Recognition Justice in GB Energy Regulation 2000 - 2016

Between 2000 and 2016 there were four ways in which regulatory procedures proactively sought insight into the energy needs of people in their homes: through the enduring social obligations and social scheme reports, the Consumer First Programme and the Consumer Vulnerability Strategy (Ofgem 2000a, 2005e, 2013c). As described in Chapter 2, recognition justice within energy policy requires that diverse energy needs are understood, articulated and actioned. The evidence listed above identifies that the recognition justice considerations of understanding of diverse needs was visible to the regulator between 2000 and 2016. Further, third sector organisations were specifically sought to ensure that these needs were articulated and identified as central to developing regulatory policies which considered the needs of vulnerable consumers (Ofgem 2013c, 2015e). However, insights within the regulator were not consistently actioned between 2000 and 2016. Instead, only the affordable warmth needs of low-income pensioners were recognised and acted upon under the direction of UK Government Policies that

made up the Social Schemes monitored by Ofgem as listed in Table 5.2. In line with Walker and Day (2012), the analysis found that this support was focused on the need for affordable warmth of low-income pensioners.

5.4 Procedural Justice

Procedural justice is defined as policy procedures that deliver on three factors: redress, transparent procedures and meaningful participation (Heffron, McCauley, and Sovacool 2015; Jenkins et al. 2016). While the preceding sections have described specific regulatory activities between 2000 and 2016, this section describes the “just-ness” of the procedures followed by regulatory policy makers. In the context of affordable energy in GB, procedural justice is of particular interest to research that seeks to explain procedures that create, sustain or embed distributional inequalities (Young, 1990; Walker and Day, 2012). In the following sections, an analysis of the policy development between 2000 and 2016 procedures of Ofgem is presented. Regulatory policy procedures in GB energy regulation followed the same procedures between 2000 and 2016. As described in Chapter 4, this included the transparent publication of policy-making procedures open to all, publication of decisions and in many cases, the outcomes of those decisions via regulatory reporting. These procedures contributed to Ofgem meeting the procedural justice requirements of transparency and participation between 2000 and 2016.

The first feature of procedural justice is transparency of procedures and decision-making (Jenkins et al. 2016; Simcock et al. 2016a; Walker and Day 2012). These were both requirements of economic regulators in the UK (Department of Business, Innovation and Skills 2011). Ofgem published accounts, non-confidential proceedings from meetings, data regarding market outcomes and logics of decision-

making. When undertaking changes to regulation, consultation papers are published alongside non confidential responses in line with UK Government guidance (Cabinet Office 2018). As the Department for Business, Innovation and Skills' Principles for Economic Regulation said in 2011:

“Decision-making powers of regulators should be, within the constraints imposed by the need to preserve commercial confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.”

(Department of Business, Innovation and Skills 2011, p. 4)

The majority of these were transparently published and all were able to submit evidence to be considered within the procedures. As identified in Chapter 4, between 2000 and 2016 these included regulatory consultations and parliamentary committees in the House of Commons and House of Lords. Full minutes were published, and, in some cases, debates were broadcast and recorded. This practice of publication enables scrutiny of policy procedures. The result of this transparent monitoring of outcomes of the energy market and energy policy procedures means that a great deal of information is in the public domain.

However, the extensive variety of information available in the public domain does not necessarily translate into the kind of accountability mechanism that is theorised within energy justice scholarship (Schlosberg and Collins 2014; Sovacool 2013).

Interviewees from third sector organisations, charities and trade associations explained that the provision of opportunities to scrutinise policy was insufficient when resources were limited and the topics within energy regulation were often highly technical and therefore difficult to engage with. In line with interviewees from third sector organisations, charities and noted by a regulator and market participant, one interviewee explained:

“Between the consumer organisation and industry, I mean, the disparity is massive you know - it genuinely is a struggle for us to fathom it.”

Ad6 (In line with Ad2, Ad4, Ad7, Re4, Re5, Re6, Re7, RG5, Ma5)

Ultimately, the link between the transparency of procedures and access and the ability to hold powerful institutions to account, relies on people with the resource and expertise to do so (Schlosberg and Collins 2014; Simcock et al. 2016a; Walker and Day 2012).

The second feature of procedural justice in the Energy Justice Framework is meaningful participation (Heffron et al. 2015; Sovacool 2015; Sovacool and Dworkin 2015a). As described in Chapter 2, analysis from Energy Justice research describes two important factors in meaningful participation: equal opportunity to contribute to procedures that develop and design policies and equal respect within those procedures (Heffron and McCauley 2017; Jenkins et al. 2011; Walker and Day 2012). Injustice in energy policy-making procedures occurs when there is uneven participation in decision making procedures. As described in Chapter 4, in the procedures to develop and design energy regulations between 2000 and 2016 there were a large range of opportunities to participate in regulatory policy design. One regulator interviewed argued:

“One of my observations would be that there is no shortage of opportunities for consumer representatives at and their organisations to be involved in policy-making the opportunities are all there.”

RG4 (In line with RG2, RG5, RG6, RG7, DG1, Ma2)

However, interviewees did not report that opportunities to engage with regulatory procedures were equal or that there was equal respect for all participants. This narrative that emerged from the interviews had two characteristics. First, some interviewees reported that only large energy supply firms had the resources to take

up the opportunity to engage with regulatory procedures. The availability of resources to engage with this range of organizations is highly inconsistent among the organizations represented by interviewees. Although one interviewee from large energy firm articulated no challenges in engaging with this range of organizations, the majority of interviewees reporting a significant challenge in prioritizing which organizations to engage with. This was particularly visible with interviewees from third sector organisations, following cuts to funding between 2009 and 2016. Instead, one interviewee linked to a democratically elected institution noted that third sector organizations wanted to participate:

“...but their resources are cut. They are scrabbling around for some money”

DG5 (in line with DG2, Ad2, Ad3, Ad4, Ad5, Ad6, Ad7, Re2, Re3, Re4, Re5, Re6, Re7)

Second, the knowledge of the energy supply firms regarding their customers meant that their expertise was valued more highly by policy makers than other evidence. Interviewees from third sector organisations also pointed to an inequality in the respect they perceived as receiving from their contribution to discussions. Rather than being able to articulate the impact as they saw it into regulatory policy debates, interviewees from third sector organisations described being required to articulate their suggestions in terms that were seen as priorities for the energy regulator. One interviewee noted:

“We have to frame any concern we have in relation to generally competition or efficiency objectives. Because if we could frame them as competition policy issues are much more likely to be tackled. Because they would be regarded, by them [Ofgem], as genuine”.

Re3 (in line with DG2, Ad2, Ad3, Ad4, Ad5, Ad6, Ad7, R1, Re2, Re4, Re5, Re6, Re7, Ma1)

It is therefore not clear that the regulatory policy procedures that provide opportunities to scrutinise the regulator due to their transparency or participate in

procedures result in procedures that meet the standards of procedural justice. Instead, the experiences of interviewees from charities and third sector organisations, and noted by policy makers in Government, elucidate the concerns regarding equitable access to procedures and inequalities between participants in terms of influencing regulatory policy outputs.

The third and final feature of procedural justice are procedures that deliver redress (Jenkins et al. 2014; Walker and Day 2012). Procedures of redress contribute to energy justice in that they provide restorative justice following harm that results from the action or inaction of a particular individual or organisation (Bickerstaff et al. 2013; Heffron and McCauley 2017). However, within the period 2000 to 2016 there are no examples of redress for consumers that reflect the restorative aims of redress within the energy justice framework. Ofgem did not articulate their procedures of redress as directly supporting individual consumers. Instead Ofgem note in 2016:

“We do not deal directly with individual disputes between consumers and energy companies.”

(Ofgem 2003g, p. 6)

Instead, redress in terms of energy policy in GB related to three procedures for consumers via legal mechanisms: securing compensation due to an individual complaint via Alternative Dispute Resolution (ADR) through the Energy Ombudsman; a judicial review and fining energy companies to deter future licence breaches and (Graham 2016; Ofgem 2003g; Public Law Project 2019). Individual redress through ADR related to complaints made by individuals against their energy supplier. The extent to which such individual interactions secured redress following harm, sufficient to meet the aims of restoring the individuals' circumstances to before the

actions of an energy supplier, is beyond the data collected for this thesis. However, Ofgem do note in their Consumer Redress Impact Assessment in 2011 that:

“Consumers may not wish to participate in a time-consuming arbitration or legal procedures. This is likely to be very small relative to the actual footprint of consumer harm; past cases investigated by Ofgem have concerned hundreds of thousands or millions of consumers at a time.”

(Ofgem 2011f, p 2)

Further, whether ADR schemes are accessible to all consumers or sufficient to overcome the unequal bargaining power and unequal information between energy suppliers and individual consumers, has yet to be proven (Hodges and Voet 2018; Main 2005). It is therefore not clear that the regulatory policies of Ofgem provided a route to securing redress that met the restorative aims of the Energy Justice Framework.

The second recourse to redress between 2000 and 2016 in GB energy regulation was a Judicial Review whereby redress could occur if a Government or regulator had made a policy that caused evident harm. In this scenario, an organisation such as a firm or charity would bring a case to court that a public body had broken the law (Public Law Project 2019). A minority of interviewees explained these procedures in a general sense with some scepticism regarding whether they had a meaningful role. For example, one interviewee echoed the views also expressed by five other respondents in saying,

“I couldn’t see the energy minister of the time being marched off to the Tower [of London] for not having met the [fuel poverty] target”

DG3 (In line with Re5, Re8, Ad2, Ad3, Ad5)

The third procedure to secure redress was the fining of energy supply firms who had breached their supply licences. For the majority of the period studied there was no formal regulatory mechanism for redress for consumers via energy firm fines.

Instead, fines for licence breaches up to 10% of energy firm turnover were paid to the Treasury (Ofgem 2003g). This changed in 2014 following a change in powers under the Energy Act of 2013 which meant that Ofgem could provide redress to consumers. In their 2014 Enforcement Guidelines, Ofgem listed the possible redress options as:

“□ measures offering compensation or other redress to consumers who have suffered loss as a result of the conduct

□ measures offering consumers the option to terminate (but not vary) their contract

□ where the consumers who have suffered loss as a result of the conduct cannot be identified (or cannot be identified without disproportionate cost), measures intended to be in the collective interests of consumers (e.g. a payment to an appropriate consumer charity)

□ measures intended to prevent or reduce the risk of the infringing conduct re-occurring, including where this may improve compliance with consumer law more generally”

□ measures intended to enable consumers to choose more effectively between parties supplying or seeking to supply goods or services.

(Ofgem 2014b, p. 20-21)

However, the powers enshrined in the Energy Act of 2013 were not used by the regulator to directly compensate consumers within the period of this study. Instead, redress payments were directed to charities to support vulnerable energy

consumers (Ofgem 2016c). While this may be an approach that is more likely to reach consumers harmed by their energy company, it does not reflect the restorative aims of redress under the Energy Justice Framework to restore the circumstances of the individual harmed (Graham 2016; McCauley et al. 2013; Walker and Day 2012).

In summary, all three concerns for procedural justice were features of Ofgem's procedures. The institutional framework for redress existed. Transparency procedures of policy provided opportunities to hold the regulator to account. Further, there were a large range of opportunities to engage with the regulator itself, alongside other organisations and institutions concerned with affordable energy prices. However, interviewees explained that the opportunity to hold the regulator to account and to engage in policy procedures was insufficient. The resources to act to do either of these things was limited in many organisations. Interviewees particularly noted the challenges for third sector organisations in securing the resources needed to participate in the wide-ranging debates regarding energy regulation and affordable prices.

5.5 Interaction of Energy Injustice 2000 - 2016

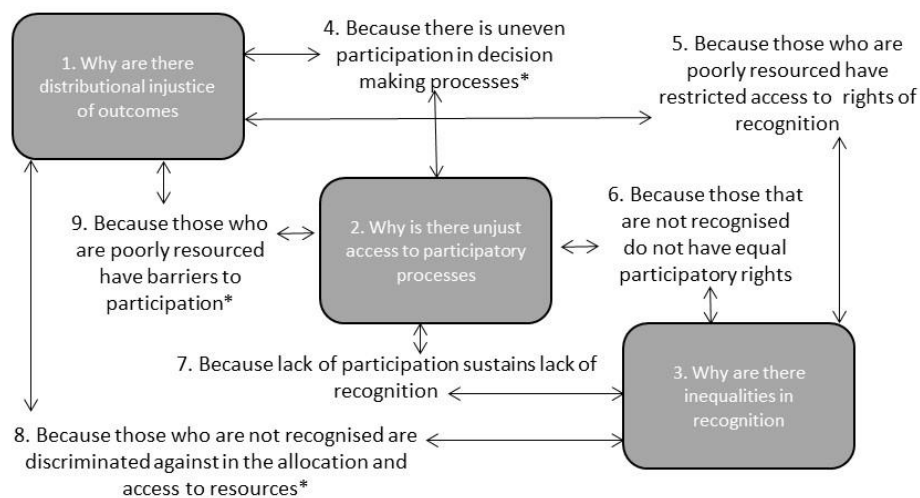
In this Chapter I have presented my findings from interrogating the thesis corpus using the Energy Justice Framework, to evaluate the extent to which regulatory energy policy procedures and outcomes in the period 2000-2016 could be described as just. The analysis identified as outputs two features of procedures, four features related to recognition and three features related to the distributional justice of regulatory procedures between 2000 and 2016. There were three main findings. First, the analysis presented in this chapter describes the distribution of the costs and benefits of engaging with the energy market. Specifically, that between 2000 and 2016 benefits of market arrangements were only available to those who

switched energy supplier. This meant that those who did not switch energy supplier, who were disproportionately likely to be amongst the most vulnerable groups in society, bore additional costs (Competition and Markets Authority 2016b). Second, my analysis identified concerns regarding recognition justice in regulatory policy outputs between 2000 and 2016. Recognition justice involves respecting the differentiated needs of communities and individuals (Sovacool and Dworkin 2015b; Walker and Day 2012). In terms of household energy use, recognition justice considers whether different energy service needs are understood, articulated and actioned (Gillard et al. 2017; Jenkins et al. 2017; Simcock et al. 2016c; Sovacool 2015). Between 2000 and 2016, I identified a significant and enduring focus on understanding the differentiated energy needs of consumers in GB. This acknowledgement and understanding of differentiated energy needs, particularly related to heating the home, are also highly visible in the related policy sphere of fuel poverty. However, there is limited evidence of these differentiated needs translating into action to support all vulnerable groups. Finally, my analysis of regulatory policy procedures between 2000 and 2016 identified a range of positive foundations for energy justice through the significant commitment to transparency of procedures and opportunities to participate in regulatory policymaking. However, interviewees from third sector organisations explained highlighted limitations when it came to translating opportunities to participate into influencing the institutions. In particular, they pointed to an inequality of resources needed in order to take up opportunities to engage with procedures and the lack of procedures that could challenge the existing energy market system. As a consequence, opportunities for procedural and recognition justice were insufficient to challenge the distributional injustices of the energy market.

These findings are presented as relating to the separate features of distribution, recognition and procedures. However, the findings of preceding research regarding

energy and environmental justice predict that any injustice related to distribution, recognition and procedures will interact and reinforce one another (Schlosberg 2009; Walker and Day 2012). I found this to be the case in energy market regulation between 2000 and 2016.

Figure 5.2 Interaction of Energy Injustice in GB Energy Market Regulation
Modified from Schlosberg, 2009



In Figure 5.2 above, I reproduce the interaction diagram from Schlosberg (2009).

The asterisk * denotes where my analysis identified examples of features leading to an interaction of distributional injustices of outcomes, inequalities in recognition and unjust access to participatory procedures. I found no evidence of poor resourcing restricting access to rights of recognition (box 6). Further, there was no evidence of a lack of participation sustaining lack of recognition (box 7) or restrictions in access resulting in a lack of recognition (box 5). Instead, participatory rights were extended to all in transparent procedures that provided a universal opportunity to engage in regulatory procedures. However, there were shortcomings in procedural and recognition justice that produced inequalities in resourcing between those who participated in the procedures of the energy regulator between 2000 and 2016, with poorly resourced participants facing barriers

to participation (box 9). Further, interviewees noted that their engagement relied on an ability to be able to frame their arguments in a manner that matched the perceived concerns of the regulator. This combined with a lack of resources to produce the effect of uneven participation (box 4). The interaction of unjust access to participatory procedures and inequitable recognition can be seen to result in discrimination in access to and the allocation of resources, with energy affordability programmes rationed to only some energy needs (box 8) rather than responding to the diverse needs evidenced within regulatory policy procedures. Ultimately, the range of opportunities to engage in regulatory policymaking did not result in the inclusive procedures articulated as requirements for energy justice. While a range of different participants had the opportunity to contribute to ways in which the policies “knew” people who use energy in their homes, by understanding diverse energy needs, procedures alone did not provide equal influence. Instead, only some energy needs were responded to in regulatory policymaking. As a consequence, the distributional injustices of energy market outcomes were not corrected by regulatory policy between 2000 and 2016.

5.6 Conclusion

Using the Energy Justice Framework (EJF) to analyse the corpus of data gathered for this thesis has raised important questions to consider in terms of the influence of different ways of knowing consumers. Applying the EJF provides a foundation to begin to explore the fairness of regulatory policy-making in line with previous research into other parts of the energy system (Jenkins et al. 2014; Sovacool 2015; Walker and Day 2012). In particular, considering procedural justice reveals that opportunities to participate in regulatory procedures and to scrutinise the regulator similarly do not result in regulatory outputs that reflect the views of all of those engaging in procedures. Instead, interviewees report an inequality of influence between those participating in regulatory policy procedures. However, while the

analysis considering energy justice identifies these important features of regulatory policy activities between 2000 and 2016, it does not fully elucidate *how* the identified inequalities occurred. As outlined in Chapter 3, I therefore used two frameworks from Policy Studies to analyse the procedures followed by the regulator to explain *how* and *why* inequitable outcomes occurred. First, I analysed how procedures operated within regulation by identifying how policies were formulated through the use of tools within regulators, as I go on to explain in Chapter 6.

Chapter 6 - Tools of Regulatory Policy Formulation in Energy Market Regulation 2000 - 2016

6.1 Introduction

In this chapter, I use the Tools of Policy Formulation (TPF) framework to identify *how* different knowledges play a role in policy formulation. In order to do this, I first identify features of policy formulation with regulatory procedures in GB between 2000 and 2016. While the identification of policy formulation tasks is presented as a preliminary stage in the literature, supporting the development of the nascent sub-field of tools of policy formulation, in my case it revealed an important pattern of regulatory procedures. Second, I present my analysis of the tools of policy formulation and their impact on the role of knowledges in regulation. I use TPF to explain in what ways tools influence policy formulation by analysing the actors, venues, capacities and effects of different tools. As explained in Chapter 3, I applied this framework by coding the texts that made up the corpus using the four aspects related to tools: the people (actors), institutions (venues) capacities (abilities enabled by tools and the actors who use them) and effects (impact of tools) of tools used by regulators to create policies.

In theory, tools of policy formulation can be used by actors in order to expand their capacities for performing the tasks that are associated with policy formulation (Adelle et al. 2016; Atkinson et al. 2018; Dunlop and Radaelli 2016; Ferretti 2017; Jordan and Turnpenny 2015). However, past empirical studies have identified that tools use, in practice, can result in barriers to expanded capacities (Dunlop 2010; Howlett and Cuenca 2017; Howlett et al. 2015; Lehtonen 2012). My analysis identified where opportunities to benefit from diverse knowledges were brought together by tools of policy formulation for use in regulatory outputs. Further, it traces the interaction of multiple tools within Ofgem to explain the different roles

that knowledges of consumers played in the tasks undertaken by actors to formulate policies. In this way, I describe whether policy formulation benefited from the capacities expected to be provided by tools. Revealing how tools intersected with the venue of Ofgem enables me to describe the extent to which tools were, in practice, able to be used to bring new ways of knowing consumers into regulatory policy formulation.

New knowledges might have been expected to be identified as being incorporated into procedures via tools of policy formulation in the period analysed. As described in Chapter 4, the policy formulation analysed occurred in a context of significant public concern regarding affordability and the fairness of energy markets. Further, the statutory powers of Ofgem were changed by the Energy Act (2010), with the specific aim of incorporating concerns beyond competition into policy formulation (The National Archive 2010). In the following sections, I therefore describe the use of tools both generally in the period and specifically, where they engaged with concerns regarding fairness or affordability. Importantly, the TPF enables not only the tracing of ways of knowing through policy formulation tasks through analysis of tools but also their impact. The challenges from the public and their elected representatives regarding the actions of the regulator did not only require that new knowledges were present but also that they had an effect on policy formulation. The effects of the tools of policy formulation in Ofgem between 2000 and 2016 are presented in section 6.5. This analysis enabled me to directly compare the role of knowledges embedded within Ofgem at its inception in 2000 to new ways of knowing consumers that occurred by 2016.

6.2 GB Regulatory Policy Formulation 2000 - 2016

In order to identify the tools being used to formulate policy, I first identified the venues, actors and tasks that made up regulatory policy formulation between 2000

and 2016. First, I identified the venues of policy formulation, the organisational and institutional locations where regulatory policy was made between 2000 and 2016. In addition to the policy formulation tasks undertaken in the venue of Ofgem, there were two additional venues of policy formulation. First, there is evidence within the corpus of an informal venue of policy formulation, the industry body for energy supply firms. This was an *informal* venue in that there were no associated powers for this body to formulate regulatory policies. The tasks of policy formulation that occurred within the industry body were not published so have not been analysed in this thesis or preceding research (Competition and Markets Authority 2015a, 2016b). However, there were voluntary codes of conduct endorsed by Ofgem regarding debt and disconnection practices, switching energy supplier and sales and marketing practices during the period studied (Ofgem 2003a, 2005e, 2008a). The descriptions within regulatory policy documents imply that the endorsement by Ofgem is connected to voluntary codes that align with the problem as characterised and evaluated by Ofgem. However, Ofgem did not undertake policy design where a voluntary code was introduced. This could pose a concern to those who, like the CMA, did not accept that the incentives existed to ensure that energy supply firms conducting policy design in an informal venue would formulate policies that benefitted people who use energy in their homes. The lack of oversight by a formal venue of policy formulation was described as a concern by the CMA in its investigation. They stated:

“...we are concerned that: (a) this fragmentation of responsibility increases the risk of policy decisions being taken that are inconsistent, conflicting, or based on insufficient analysis. It also increases the difficulty both industry parties and other stakeholders have in navigating the regulatory framework and (b) the combination of roles and responsibilities leads to some parties - notably industry participants -

having a role in decision-making but facing incentives that are not always aligned with those of consumers”

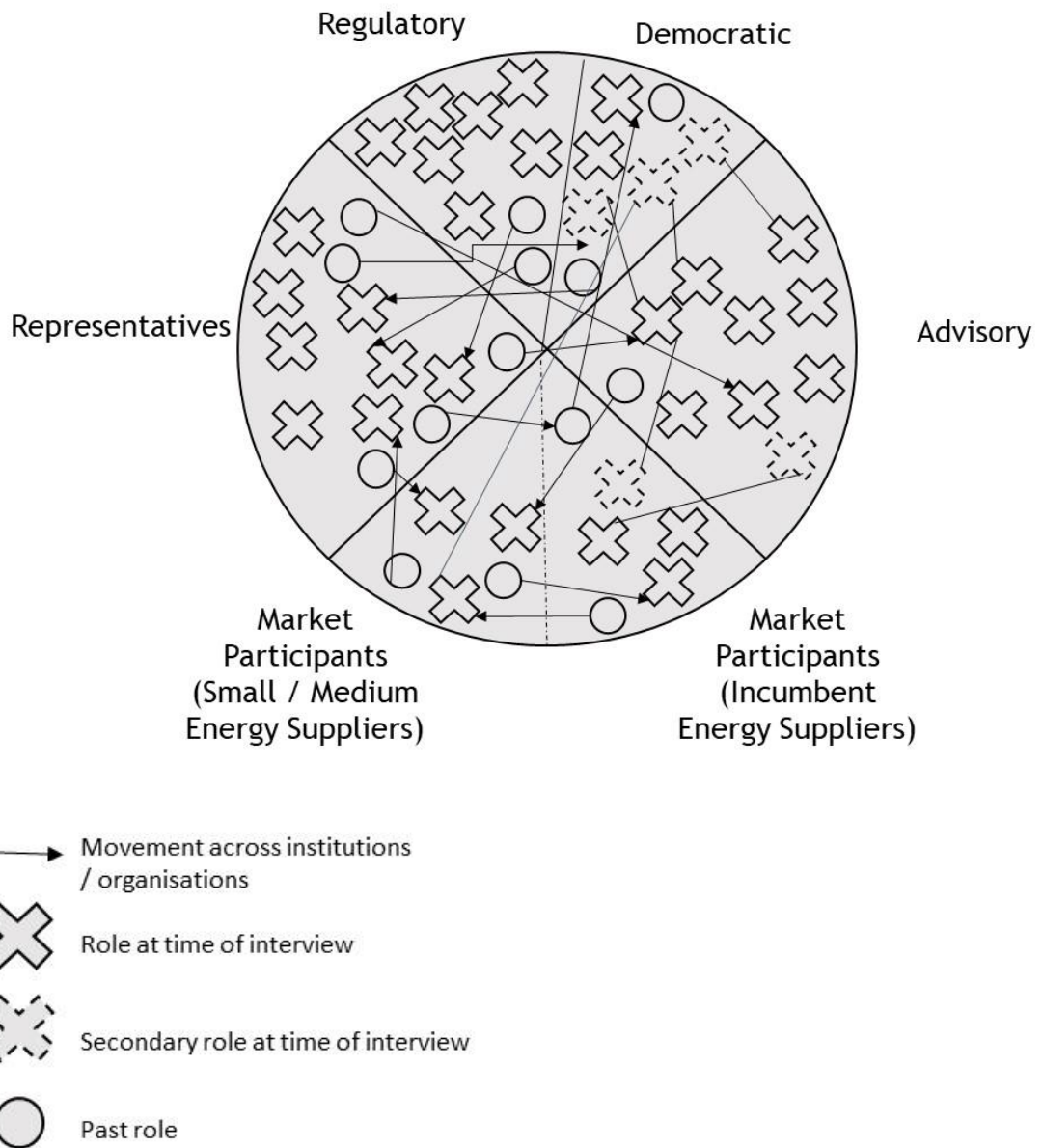
(Competition and Markets Authority 2016b, p. 1233)

Second, a further formal venue of policy formulation is visible in the corpus: The Competition and Markets Authority (CMA). The CMA was a formal policy formulation venue as it had statutory powers that set out its role in evaluating the operation of markets in GB (Enterprise and Regulatory Reform Act, 2013). The energy market investigation was conducted in the venue of the CMA as I described in Chapter 4

Having identified the venues of policy formulation, I went on to determine the actors visible in these venues. As described in Chapter 3, I concluded from the descriptions of my interviewees that actors involved in policy formulation between 2000 and 2016 fell into six categories: regulatory governance, democratic governance, market participants, representatives, advisory and monopoly providers. Individual actors in these categories had contributed to the regulatory policy activities described in Chapter 4.

Interviewees who participated in my research described a perception that there were few individuals and organisations who regularly engaged as actors of policy formulation who moved between different roles. To explore this description, where an interviewee noted a past career or secondary role linked to energy formulation, I connected the roles to demonstrate this movement. My findings are presented in Figure 6.1 below.

Figure 6.1 Roles within policy formulation of interviewees



Among my interviewees, the narrative of individuals who moved between different organisations was true for 12 of the 35 participants. I noted while conducting my research that the same organisations beyond regulatory and democratic institutions were described in the descriptions of 33 of the 35 interviewees. Further, a subset of 14 interviewees would regularly refer to specific individuals by their first name, clearly articulating a significant level of familiarity within this group of experts. While insufficient to generalise across the industry, the experiences of interviewees

provide an interesting additional context to considerations of consistency of respected expertise over time.

This is because it implies that the same expertise was accepted as relevant for roles across the different organisations and institutions engaged in policy formulation (Boswell 2008; Hong and Kim 2017; Howlett 2009; Howlett and Ramesh 1998; Schrefler 2013). This could be significant in that this expertise was described by interviewees as a barrier for the equal engagement by all. One interviewee explained that this extended to the presentation of highly technical regulatory activities in documents. Interviewees described this technocratic nature of regulatory policy in terms of a significant challenge. One interviewee described this as regulatory policy having its own language, stating that:

“It’s just very, very difficult to translate the consequences of some of the [regulatory] proposals back into English. I’d much rather that they were just written in English in the first place and stop the ability to exclude people from the choices made and how to discussions of how to fix things.”

Re3 (In line with Reg3, Reg5, DG2, DG3, Rep1, Rep2, Rep4, Rep5, Ma4, Ad7, Ad8)

Having identified who was involved in the policy formulation procedures - the actors - and in what venues, I identified the five interlinked tasks of policy formulation. As described in Chapter 3, policy formulation can be identified by breaking activities down into five interrelated tasks: problem characterisation, problem evaluation, objective setting, option assessment and policy design (De Ridder et al. 2007; Dunn 2015; Giest and Howlett 2012; Jordan and Turnpenny 2015; Wolman 1981; Wu et al. 2017). I therefore identified which tasks were undertaken in formulating regulatory policy in GB. This is an important stage of analysis as policy formulation is particularly opaque when compared to other policy-making activities (Craft and Howlett 2012; Howlett et al. 2015; Jordan and Turnpenny

2015; Thomas 2001). As demonstrated in Table 6.1, between 2000 and 2016 all five tasks of policy formulation were undertaken to formulate energy market regulation.

Table 6.1 Tasks of Regulatory policy formulation in formal venues 2000 to 2016

	Regulatory Output	Problem characterization	Problem evaluation	Specification of objectives	Options assessment	Policy design
1	The Social Action Plan (Ofgem 2000b)		Y			Y
2	Review of domestic gas and electricity competition and supply price regulation (Ofgem 2001b)		Y	Y	Y	Y
3	Making Markets Work for Consumers (Ofgem 2003c)		Y		Y	Y
4	Preventing debt and disconnection (Ofgem and Energywatch 2003)		Y		Y	Y
5	Domestic Market Review (Ofgem 2004b)		Y			
6	Social Action Strategy (Ofgem 2005e)		Y			Y
7	Energy Supply Market Probe (Ofgem 2008, 2009b, 2009c, 2009a)		Y		Y	Y
8	Notice of modifications of standard licence condition 27.11 (Ofgem 2010c)		Y		Y	Y
9	Retail Market Review (Ofgem 2010f, 2011h, 2012k, 2012i, 2012o, 2013k, 2013g)		Y		Y	Y
10	Consumer Vulnerability Strategy (Ofgem 2013c)	Y	Y		Y	Y
11	Decision to make modifications to the gas and electricity supply licences to reform the switching processes for indebted prepayment meter customers - the Debt Assignment Protocol (Ofgem 2015f)		Y		Y	Y
12	Market investigation reference in respect of the supply and acquisition of energy in Great Britain (Ofgem 2014a)		Y			
13	Prepayment meters installed under warrant: final proposals (Ofgem 2016f)		Y		Y	Y
14	Energy Market Investigation Remedies (Competition and Markets Authority 2016d, 2016f, 2016e, 2016b)		Y		Y	Y
15	The future of retail market regulation (Ofgem 2016j)		Y		Y	Y

While all tasks of policy formulation were undertaken at some point, the majority of policy formulation tasks at Ofgem and the CMA between 2000 and 2016 focused on problem evaluation, option assessment and policy design (see lines 1, 3-5, 6-10, 11-14 in Table 6.1). This meant that the majority of the tasks of regulatory formulation in this period were focused on determining the extent of a problem, the assessment of different options to respond to that problem and the design of

policies - the choice of how a policy might be implemented (Eliadis et al. 2005; Howlett 2010; Wolman 1981; Wu et al. 2017). On the other hand, problem characterization, work to determine the nature of a problem, and setting objectives of policy formulation are very rare between 2000 and 2016.

There are four exceptions to this pattern as I demonstrate in Table 6.1. The first exception was the Domestic Market Review Report (line 5) which focused solely on problem evaluation without any further tasks of policy formulation. As outlined in Chapter 4, this output focused on reporting on measures of engagement and invited views on the report's content (Ofgem 2005b). The second exception was the referral from Ofgem of the energy market to the CMA (line 12). In line with the statute which sets out this procedure (the Enterprise and Regulatory Reform Act, 2013), Ofgem evaluated the problems in the energy market before recommending that the CMA take on the policy formulation tasks that might result from their evaluation (Competition and Markets Authority 2016b; Ofgem 2014a; Ofgem, Office of Fair Trading and Competition and Markets Authority 2014). The third exception was problem characterization in the Vulnerable Consumer Strategy of 2013 (line 10 in Table 6.1). In the development of the Vulnerable Consumer Strategy (Ofgem 2012h, 2013c), analysts at Ofgem brought new characterisations of vulnerability which moved beyond the problem as characterised by earlier regulatory policies, as reflected in the Utilities Act of 2000 (Ofgem 2000b, 2005e). The fourth and final exception to this pattern was the policy in 2002 to remove the final price controls in GB and introduce full retail market competition (Ofgem 2001b). In addition to evaluating problems within GB energy markets and assessing regulatory options for maintaining or withdrawing price controls, Ofgem set the objectives of its retail market regulation: to introduce and then maintain competitive retail energy markets for all domestic energy consumers (line 2 in Table 7.3). As a result, the policy formulation tasks mainly acted within the

problem as characterised by the Utilities Act of 2000 and universally with the objective set in 2001: the promotion of competitive retail markets.

The problem characterisation and objective setting within the Utilities Act of 2000 was broadly in line with the statutory powers as set out by elected representatives for much of the period analysed in this thesis. However, it does not reflect the letter or the spirit of the role of energy regulation as set out in the Energy Act of 2010 or the Energy Act of 2013 (Deller et al. 2018; Mantzari and Ioannidou 2019; Thomas 2019). Legislation from 2010 onwards took place against a backdrop of considerable concern by elected representatives and Government departments regarding the outcomes of energy markets for consumers (Deller et al. 2018; Simcock et al. 2016a; Waddams Price 2018). Indeed, the Energy Act of 2010 specifically set out to ensure that Ofgem included considerations beyond energy market competition in its decision making. The explanatory notes for the Energy Act of 2010 stated:

“Competitive solutions may take time to deliver, and the market may create barriers for some groups of consumers so that the promotion of competition may not be the most effective means of protecting their interests. These provisions clarify that Ofgem should consider using alternative types of solution to address the consumer detriment instead of, or alongside, measures to promote competition.”

Energy Act 2010 Explanatory Notes C3.78 (The National Archive 2010)

This change in statutory powers may have led to a role for new knowledges. However, the fact that there was a limited role in regulatory policy formulation for objective setting and problem characterisation raises the question of whether there was any role for knowledges not already embedded within the regulator to conduct activities associated with those tasks. This is because problem characterisation

includes activities that identify issues that require a response and the selection of evidence to describe what the problem is (Baumgartner and Jones 1991; Kingdon and Thurber 1984; Thomas 2001). Further, objective specification sets out the aims to be met by the policy (Howlett 2010; Wu et al. 2017). These two tasks - problem characterization and objective setting - are significant in setting the boundaries for policy and their exclusion from regulatory activities between 2000 and 2016 could have significantly impacted the roles of knowledge. Specifically, limited problem characterisation and objective setting tasks would suggest that there were few opportunities for ways of *new* knowledges to challenge embedded assumptions within energy regulation to adapt to the new expectations of the change in statutory powers in 2010. Whether this pattern of limited tasks of policy formulation resulted in continuity or change can be revealed by analysing the *tools* of policy formulation, as I go on to explain in the subsequent sections.

6.3 Tools of Regulatory Policy Formulation 2000 - 2016

Analysis of tools of policy formulation provided insight into *how* different knowledges were used within energy market regulation. Specifically, I identified the actors, venues, capacities and effects of *tools* within the policy formulation tasks described in section 6.2. Where a particular tool was chosen by regulatory policy formulation actors and used to implement policies, the use of a tool revealed the role of knowledges in conducting those tasks. These tools provided opportunities to extend the ability of policy formulators “to marshal the necessary resources to make intelligent collective choices about and set strategic directions for the allocation of scarce resources for public ends” (Painter and Pierre 2005, p. 2).

While a diverse range of actors were identified as engaging in policy formulation procedures, described in section 6.2, the only actors visible as using tools were analysts in the venues of Ofgem and the CMA. Between 2000 and 2016, regulatory policy formulation tools included indicators, impact assessments and six types of participatory tools (a workshop, a public engagement event, a roundtable, hearings, deliberative focus groups and stakeholder consultations). Analysing the corpus identified two overarching tools of policy formulation: *participatory* tools that were used in all regulatory activities and *indicators* that were used in the majority of regulatory activities. The following section describes these two main tools used regularly by Ofgem between 2000 and 2016 and describes the implication of their use in terms of policy formulation.

6.3.1 Use of indicators in GB regulatory policy formulation 2000 - 2016

The first tool used in the formulation of energy market regulation between 2000 and 2016 were indicators. Indicators relating to policy outcomes are a core feature of policy formulation in the UK (Hood 2007; Jackson 2011; Lehtonen 2013). Indicators have been identified as measures that support actors formulating policy on whether to act, to signal a particular action, to focus a complex policy discussion and to provide transparency and accountability via monitoring (Briguglio and Pace 2003; Gudmundsson 2003; Lehtonen et al. 2016; Radaelli 2018; Rosenström and Lyytimäki 2006). Indicators as a tool in policy formulation broadly speaking can be used both to ‘open up’ or ‘close down’ the range of knowledges considered (Rafols et al. 2013; Sébastien, Bauler, and Lehtonen 2014; Stirling 2008). As I demonstrate below, indicators were consistently visible as a tool used within Ofgem between 2000 and 2016 and by the CMA in their energy market investigations between 2014 and 2016. These indicators monitored measures relating to two issues: first, the

participation of consumers in the energy market and second, the treatment of vulnerable consumers by energy supply firms.

The first indicators used in regulatory policy formulation related to energy consumer engagement in the market through changing products, tariffs and energy supplier. Ofgem monitored these through mandatory data requests to energy supply firms and annual surveys (Competition and Markets Authority 2016b; Ofgem 2008b, 2012i). These themes were explored with a sample of consumers on an ad hoc basis in 2001 and in 2008, specifically with a sample of vulnerable consumers (Ofgem 2001a, 2008g, 2008h). From 2011 to 2015, a regular survey was commissioned focusing on the amount of switching between suppliers, consumer knowledge about switching, how consumers switched and made evaluations about switching and how they searched for deals (Ofgem 2011c, 2012c, 2013e, 2014e, 2015a, 2015j, 2016b). The CMA followed a similar approach in their energy market investigation, combining data from energy supply firms with a survey of energy consumers that asked about their attitudes and their behaviour regarding switching supplier (Competition and Markets Authority 2015a, 2016b).

Although indicators could be used by actors to conduct any of the five policy formulation tasks (Howlett and Cuenca 2017; Lehtonen et al. 2016; Sébastien et al. 2014), the indicator of energy market engagement was regularly used in regulatory policy formulation between 2000 and 2016 in the policy formulation task of problem evaluation. In successive reviews of the energy market and then the CMA's energy market regulation, this indicator was used to describe the lack of engagement in the energy market as a problem that required regulatory intervention (Competition and Markets Authority 2015a, 2016b; Ofgem 2008d, 2010f, 2014b). As I explained in Chapter 4, both economic regulators were concerned about the low levels of energy market engagement of consumers. For example, Ofgem used the indicator of energy market engagement to conclude that:

“Whilst customers all have a choice of supplier, the majority remain with the supplier they had before market opening. This very static picture is, in our view, contributing to the market not working well for consumers.”

(Ofgem 2012i, p. 15)

On two occasions, this monitoring of energy market participation engaged with the concern of fairness in the energy market (Ofgem 2015j, 2016b). These two monitoring reports used survey data to gain insight into consumer engagement in the market, in line with indicators and consistent since 2000. However, the survey also sought insight into the success of a new rule that consumers should be treated fairly by their energy supplier. They did this by posing survey questions to understand if consumers were satisfied with and trusted their energy supplier. If consumers were satisfied and trusted their energy provider, Ofgem could conclude that the firm was acting fairly (Ofgem 2015j, 2016b). Ofgem stated that:

“The RMR aims to create a fairer energy market that consumers are more willing to trust and engage in... Ofgem introduced new Standards of Conduct to ensure that consumers are treated fairly by suppliers and their representatives in all their dealings with them. The aim is that, over time, the level of trust consumers have in energy suppliers improves.”

(Ofgem 2015j, p. 59)

The questions did not extend into fairness in terms of affordability of energy, pricing or the health impacts of cold homes, articulated in terms of fairness that characterised the concerns of third sector organisations raised in the press at this time (BBC News 2016; Independent 2015). Whether these might have, in time, been incorporated into the indicator is unknown, due to the removal of the RMR reforms and therefore, the related indicators. However, the second iteration of the

indicator maintained the link between a fair market and consumer engagement in 2016, stating:

“The RMR aimed to promote consumer engagement in the energy market and improve competition between suppliers by making the market simpler, clearer and fairer.”

(Ofgem 2016b p. 4)

There was, therefore, no link between the concern with fairness in terms of affordability of energy and the indicator of competitive market engagement between 2000 and 2016. There was, however, a new report recommended by the CMA investigation which directed Ofgem to publish, from 2017, a report to replicate the analysis of switching behaviour in terms of demographics (Competition and Markets Authority 2016b).

The second indicator used in energy market regulation consisted of measures that tracked the treatment of vulnerable consumers by energy supply companies. From 2000 to 2016, energy suppliers submitted quarterly data on indicators defined by Ofgem with regards to their treatment of consumers in vulnerable situations (Ofgem 2000a, 2005e, 2013c). While this topic might have shone a light on affordability pressures or fairness of market outcome, the indicator focused on three key themes: treatment of consumers with energy debt; access to a register of vulnerable consumers; and delivery of support schemes associated with vulnerable customers of energy suppliers (Ofgem 2001c, 2002, 2003f, 2005d, 2009j, 2010g, 2011d, 2012d, 2013f, 2014f, 2015g, 2016d). Ofgem used this indicator to support its regulation against existing rules as it explained in 2009:

“We do this by monitoring supplier practices, identifying good practice and areas for improvement, evaluating the effectiveness of our policies, and ensuring compliance with our rules”.

(Ofgem 2009j, p. 1)

This monitoring of energy suppliers' treatment of vulnerable consumers was used repeatedly to review the practices regarding debt collection between 2000 and 2016 and was used in problem evaluation as part of the Vulnerable Consumer Strategy of 2013 (Ofgem 2008a, 2009h, 2013c, 2015e). As in the indicator of consumer market engagement, measures of affordability or fairness of market outcomes were not included in indicators relating to vulnerable consumer outcomes.

The analysis of these indicators identifies two distinct ways in which people who use energy in their homes are known within regulatory policy formulation: as vulnerable consumers in debt to their supplier and as individuals engaging in the market. While indicators in regulation may have yet to be used to set a specific level of success (Radaelli 2018), elected representatives and the public explained that energy affordability should be a concern when concluding whether or not that consumers benefited from energy markets between 2000 and 2016 (National Energy Action and E3G 2018; Ofgem and Energywatch 2003). However, the concern regarding affordability was consistently absent from indicators.

As I described in Chapter 3, analysis of tools shows the impact that tool-use has in practice on the capacities of formulation actors in venues. Analysis of the use of indicators by formulation actors - analysts working at the regulator - within the venue of Ofgem, identified their regular use and expansion. This reveals two important insights regarding the capacities that related to the indicator tool as it intersected with the specific venue of Ofgem. First, as a tool, indicators can, in theory, provide a transparent measurement and monitor policy outcomes and provide a shared source of reliable information for policy formulation (Hood 2007; Lehtonen 2015; Turnhout 2009). This capacity of the tool itself to monitor outcomes

is clearly visible in Ofgem's use of indicators between 2000 and 2016. Second, the analytic capacities of actors within Ofgem were extended by using indicators. Specifically, I identified that analysts within Ofgem were able to extend the range and regularity of data to calculate indicators and used the indicators to conduct problem evaluation.

An expanded capacity through indicators was the focus of regulatory policy formulation as an aim in itself (Competition and Markets Authority 2016b; Ofgem 2005e, 2009f, 2012i, 2013c). This was in line with the traditional concern of economic regulation regarding the information asymmetry between regulated firms and regulators (Baldwin et al. 2012; Levi-Faur 2011; Robinson 2002). Specifically, I identified that there was an expansion in the content of indicators through more extensive demands for data from energy supply firms (Competition and Markets Authority 2016b; Ofgem 2005e, 2009f, 2012i, 2013c). However, mapping the use of indicators elucidates two limits in the extent to which they extended the capacity of regulatory policy formulators. First, the indicators visible in my analysis related to the participation of consumers in the energy market and second, to the treatment of vulnerable consumer by energy supply firms, were used to conduct a subset of policy formulation tasks. As described in section 6.2, regulatory policy formulation between 2000 and 2016 focused predominantly on the tasks of problem evaluation and option assessment. This meant that indicators were not used to expand the characterisation of problems or contribute to the objectives and aims of regulation.

As a consequence, the actors extending their analytic capacity using indicators did so on the basis of extending insight into an understanding of market operations already embedded in the regulator. While indicators as a tool can be used to either 'open up' or 'close down' the range of knowledges considered when actors conduct policy formulation tasks (Rafols et al. 2013; Sébastien et al. 2014; Stirling 2008), in

my research, neither occurred. Instead, actors of policy formulation maintained their focus on measuring energy market outcomes in terms of engagement and monitoring energy firm behaviour regarding their vulnerable customers. This provided little opportunity for the changes in political or public concern to be incorporated into new indicators for Ofgem to monitor between 2000 and 2016. Instead, the objectives set in 2000 and 2001 in terms of market outcomes (Ofgem 2001b) and treatment of vulnerable consumers by energy supply firms (Ofgem 2000b), continued. This provided no opportunity for wider concerns regarding fairness or affordability to be monitored with indicators. I discuss the implications of this lack of change in indicators in terms of effects in section 6.4.

6.3.2 Use of participatory tools in GB regulatory policy formulation 2000 - 2016

Participatory tools are procedural steps in policy formulation that facilitate a dialogue between policy formulating actors within an institution and people outside of that institution (Abrams and Primack 1980; Felt et al. 2012; Hisschemöller and Cuppen 2015; Hoppe 2018). More specific definitions of participatory tools vary, as do the arguments regarding the effectiveness and aims of using participatory tools (Beierle 2010; Fischer 2000; Hisschemöller and Hoppe 1995; Smith 2009). However, a shared understanding is that tools that enable participation of those outside of an institution should, in theory, provide the benefit of a diversity of views to aid knowledge production (Pallett and Chilvers 2013; Smith 2009; Woodhouse and Nieuwsma 2001). Participatory tools can be used within any of the tasks of policy formulation to open up and evaluate policy problems and evaluate options for policy design (Beierle 2010; Cuppen et al. 2010; Fischer 2000; Hisschemöller and Cuppen 2015).

In analysing GB's energy regulation between 2000 and 2016, I identified 6 participatory tools. Of these six, four were rare - a public engagement event, a

workshop, a roundtable and hearings with energy market stakeholders (Competition and Markets Authority 2016a; Ofgem 2001b, 2013c, 2015f). However, two participatory tools played a repeated role in regulatory policy formulation: deliberative focus groups with members of the public and stakeholder consultations. I describe these in turn in the sections below.

6.3.2.1 “Consumer First” Deliberative Focus Groups

The first prominent participatory formulation tool consisted of deliberative focus groups. These were commissioned by actors within the venue of Ofgem, within the Consumer First research program. Policy formulation actors within Ofgem engaged with this tool in two ways. Firstly, they proposed the topics that were to be discussed within the focus groups. This was done on an ad hoc basis. Secondly, regulatory actors used insights from these focus groups in policy formulation tasks.

Deliberative focus groups at Ofgem, called Consumer First Panels, were introduced in 2007. Their scope was:

“...to help improve our understanding of what really matters to consumers and to increase direct consumer contributions to Ofgem’s deliberations They are a unique resource that we can call on regularly to provide feedback on key energy topics and regulatory issues, and act as the ‘voice of the consumer’.”

(Ofgem 2011b, p. 1)

Some interviewees who held, or had held, policy formulation roles at Ofgem recognised the Consumer First research and broadly welcomed the insights it generated. For example, one interviewee explained:

“I think that they are such are such a useful vehicle for us. To test certain issues and to go, well, more ‘deep dive’ with them.”

Reg2 (in line with Reg4, Reg5, Ad3)

Each year, 80 to 100 consumers were recruited through door to door and snowballing approaches to form a demographically representative sample. This group of participants met three times over the course of a year to deliberate topics selected by Ofgem. The events were held over the course of a year with each 'wave' of panellists asked to:

"...become 'expert' consumers - meaning that they are able to discuss issues from a consumer perspective with a rounded view of how the energy industry works and knowledge of the business models involved."

(Ofgem 2009e, p. 3)

Between the launch of the Consumer First Programme in 2007 and the end of the period analysed by my thesis, there were 13 deliberative focus groups on topics linked to supply market regulation. In Table 6.2, I demonstrate that in the 13 focus groups, the topics selected by Ofgem largely focused on two interlinked overarching topics: energy market engagement and the information requirements for consumers to engage with the market.

Table 6.2 Consumer First Deliberative Focus Groups Topics

	Topic	Report Name	Cited in Regulatory Policy
1	Information requirements Energy market engagement	Energy Market, Billing and Price Metrics (Ofgem 2009e)	Cited in Energy Supply Market Probe Remedies (Ofgem 2009f)
2	Information provision Energy market engagement	Tariffs Structures (Ofgem 2010b)	None cited
3	Energy market engagement <i>Fairness</i>	Supplier Standards of Conduct and Prompt Pay Discounts (Ofgem 2010a)	None cited
4	Energy market engagement Information requirements	Energy Market and Tariff Structures (Ofgem 2011b)	Cited in Retail Market Review (Ofgem 2013k)
5	Energy market engagement Information requirements	Consumer engagement with the energy market, information needs and perceptions of Ofgem (Ofgem 2012a)	None cited
6	Information requirements	Consumer views on Tariff Comparison Rates (TCRs) (Ofgem 2012b)	Cited in Retail Market Review (Ofgem 2013k)
7	<i>Vulnerable Consumer Experience</i>	Priority Services Register (Ofgem 2013b)	Cited in Consumer Vulnerability Strategy (Ofgem 2013c)
8	Energy market engagement	Change of Supplier Procedures (Ofgem 2013a)	None cited
9	<i>Vulnerable Consumer Experience</i>	Affordability, Environmental and Social Schemes (Ofgem 2014c)	Cited in Prepayment meters installed under warrant: final proposals (Ofgem 2016f)
10	Energy market engagement Information requirements	Consumer engagement and trust in the energy market - Retail Market Review Reforms (Ofgem 2014d)	None cited
11	Energy market engagement Information requirements	Third Party Intermediaries and Price Comparison Websites (Ofgem 2015d)	None cited
12	Energy market engagement	Exploring Trust and some Retail Market Review Remedies (Ofgem 2015b)	None cited
13	Energy market engagement <i>Vulnerable Consumer Experience</i>	Switching Suppliers for Domestic Customers in Debt (Ofgem 2015c)	None cited

The first overarching topic - information requirements for market engagement - saw discussions regarding the regularity of information from energy supply firms and the formatting of that information (lines 1, 2, 4, 5, 6, 10 and 11). The second - energy market engagement - saw discussions regarding switching energy suppliers and trust in energy supply firms and the extent to which trust impacted market engagement (lines 1 - 5, 8 and 10 - 13). Proposals regarding the structure of information provided by consumers from the deliberative focus groups were implemented by Ofgem as an outcome of the Energy Supply Market Probe (Ofgem 2009f) and the Retail market Review (Ofgem 2013k), following focus group attendees assessing options of information displayed (Ofgem 2009e, 2010b, 2012b).

Four deliberative focus groups were invited to focus topics beyond information provision and energy market engagement; these are identified in italics in Table 6.2. The first, a discussion of fairness, focused on firms who offered a 'prompt pay' discount. This was related to a possible outcome of the Retail Market Review that discussed the removal of the range of discounts and surcharges on the basis that they added complexity to comparing offers (Ofgem 2011h). The consideration of fairness of this particular discount (in the region of £30) focused on encouraging the perceived 'correct' behaviour of early payment and whether others who did not pay early (even those who paid on time) would be in effect funding this discount. The focus group report stated:

"The concept of a discount for paying promptly was generally seen to be fair. However, this fairness was perceived to depend on how the discount was funded. It was generally felt that a discount should not be funded by non-prompt-paying consumers paying more, but rather that it should come out of the administrative savings suppliers may make through receiving payment early."

(Ofgem 2010a, p. 5)

The recommendation of the panels was that a discount should be derived from savings related to supplier processes and not funded by other customers. However, no regulatory output enacted this suggestion.

Three further deliberative focus groups considered a topic beyond information provision and energy market engagement in discussions regarding vulnerable consumer experiences (Ofgem 2013b, 2014c, 2015c). First, a wave of deliberative focus groups were asked to consider people's energy needs in a discussion regarding the Priority Service Register - a registration scheme funded by energy suppliers to log characteristics linked to energy vulnerability (Ofgem 2013b). Responding to pen portraits of vulnerable energy users, panellists concluded that:

“Vulnerability was also thought to be a spectrum encompassing people with very different needs and support requirements. For example, a person with back problems may only need their PPM meter moved in order for them to be able to charge it, while someone with a specific learning difficulty may need a lot of support when communicating with energy companies... While there were some groups of customers who should potentially be automatically be registered for the PSR (i.e. those with certain conditions which make them particularly reliant on energy), a better approach to helping vulnerable consumers within the energy market would be for the companies to take more steps to “know their customers” by understanding better their conditions and personal circumstances.”

(Ofgem 2013b, p. 39)

This broadening of the concept of vulnerability, along with support for energy suppliers to “know their customers”, was cited in Ofgem's Consumer Vulnerability Strategy in its recommendation for energy supply firms to respond to customer needs beyond the Utilities Act (2000) definition of vulnerability (Ofgem 2013c).

The second wave of focus groups to consider vulnerable consumer experiences related to the fairness of PPM charges (Ofgem 2014c). The report from this wave states:

“Nearly all the Panellists think that it is unfair that unit costs for prepayment meters are generally higher than for other payment methods. This is particularly because they associate prepayment meter use with those on low incomes who can least afford the additional costs. Whilst they are unhappy about the difference in charges, many Panellists do not feel that it is acceptable for the additional costs of prepayment meters to be spread to all customers. They find it difficult to get beyond the view that any extra costs should come from suppliers’ profits.”

(Ofgem 2014c, p. 29)

The argument that PPM consumers were more likely to be on low incomes and unlikely to be able to pay additional high costs related to the PPM system in this wave of focus groups, is cited by Ofgem’s policy output regarding PPM warrant costs (Ofgem 2016f). While regulatory policy capped warrant costs for PPM consumers, it did not set out how this reduction in fees would be funded. This meant that the proposal from panellists - that costs associated with PPM should be paid from energy supply profits not consumers - was not implemented.

The final wave of focus groups to consider vulnerable consumer experiences was linked to energy market engagement and discussed the ability of people with an energy debt to switch energy supplier (Ofgem 2015c). The report of the focus groups explains that:

“Most Panellists end up thinking that in most circumstances, customers with debt should not be allowed to switch. They largely think that if a customer incurs debt they have a responsibility to pay it off with their existing supplier before they can switch. Panellists list a significant exception where they think that customers with

debt should be allowed to switch supplier: where the debt is a result of supplier error.”

(Ofgem 2015c, p. 4)

The recommendation that customers in debt should not be allowed to switch was not adopted in any regulatory policy outputs within the period analysed.

The drawing in of perspectives from beyond the regulator is the central capacity of a participatory tool and formulation actors within Ofgem did secure this insight. My analysis identified that the participatory tool of policy formulation within the Consumer First programme shed light on the steps taken by Ofgem to gain insight into the views of the public on energy market regulations. However, it is important to note that the topics considered were set by staff within the regulator and predominantly focused on energy market engagement and information provision, as demonstrated in Table 6.2.

The use of deliberative focus groups between 2000 and 2016 did not allow for the public to challenge the topics discussed. The bounding of topics discussed in the deliberative focus groups therefore poses an important barrier to the capacities of the tool intersecting with the venue of Ofgem. Further, the topics as a whole maintained a focus on two ways of knowing people that were already embedded within Ofgem: as vulnerable consumers and as consumers in the market. These may not have been the topics that the public viewed as most central to energy market regulation. Participatory tools, in theory, may provide the opportunity for diverse views from the public to be heard. However, when used in Ofgem they failed to provide the opportunity for focus group participants from the public to decide the issues that would be under discussion. There is, therefore, little evidence of the participatory tool of focus groups effecting regulatory policy formulation, as I go on to explain in section 6.4 below.

6.3.2.2 Stakeholder Consultations

The most commonly used tool of policy formulation in energy market regulation between 2000 and 2016 was the stakeholder consultation. As demonstrated in Chapter 5, stakeholder consultations were mandated by guidance from the UK Government for all economic regulators (Department of Business, Innovation and Skills 2011) and the Utilities Act (2000) specified that Ofgem was to consult on and publish key decisions. Stakeholder consultations were conducted in public and provided an equal opportunity to engage with actors at Ofgem who were completing tasks of regulatory policy formulation. Between 2000 and 2016, there were 21 consultations issued by Ofgem regarding the retail market. There were a large range of respondents to Ofgem's consultations in this period: academics, members of the public, unions consumer advocates, campaigns, charities, regulated firms, other regulators, government officials and elected representatives from local councils, devolved administrations and the Houses of Parliament. Although the number of respondents increased over time, with the average number of respondents doubling between 2000 and 2016, the sole group of actors consistently engaged over time were the ex- monopoly supply firms and the statutory consumer advocate.

The repeated engagement with Ofgem by firms is described by interviewees in third sector organisations and within firms themselves, as providing an opportunity to build relationships with actors using tools of policy formulation within this period and from the regulator's predecessor regulator. One interviewee explained:

“That might reflect the fact that we were the former monopoly provider for [removed] that there is a long-term relationship there for us. Which isn't true for all of the new players in the market. I'm not saying that we have a huge number of people in a company from then [privatization], although I'm surprised how many

are still here! So, our relationship tends to be quite positive, we work really hard to maintain good relationships right the way across - from Ofgem CEO right down to the analysts.”

Ma5 (in line with Ma1, Ma2, Ma4, Ma6, Ad2, Ad3, Ad4, Ad6, Re3, Re4, Re7, Re8)

In addition to a disparity in the number of interactions that energy supply firms had with Ofgem over time, interviewees described a significant resource difference between energy supply firms and charities and third sector organisations who wished to engage with Ofgem but were unable to do so. Ofgem acknowledged this resource challenge in 2012, stating:

“We recognise that many of the organisations that we would like to engage with are facing considerable constraints on their time and resources. We therefore propose to use a variety of methods of communicating to try to make it easier for organisations to engage in our work.”

(Ofgem 2012h, p. 16)

Energy supply firms, however, consistently described teams of regulatory specialists whose role was to directly engage with actors of policy formulation at Ofgem. While the majority described this as a required resource burden, one interviewee was more blunt, stating:

“The first thing to say is that we resource up. There are significant numbers of employees whose role full-time is interacting with them [Ofgem].”

Ma5

In addition to the differences in resources and the availability of long-term relationships, interviewees also described a challenge in articulating their views in response to Ofgem, due to the technocratic nature of discussions regarding competition. One interviewee from a representative body explained:

“We have to frame any concern we have in relation to generally competition or efficiency objectives. Because if we could frame them as competition policy issues are much more likely to be tackled. Because they would be regarded by them as genuine”.

Re3 (in line with DG2, Ad2, Ad3, Ad4, Ad5, Ad6, Ad7, R1, Re2, Re4, Re5, Re6, Re7, Ma1)

This experience - described by interviewees from representative bodies, democratic governance institutions, advisory groups and an energy supply firm who had engaged with stakeholder consultations- suggests that these consultations did not necessarily provide the opportunity to engage with actors of policy formulation in Ofgem in the open dialogue of diverse views to aid in knowledge production, as envisaged by the designers of participatory tools (Beierle 2010; Fischer 2000; Hisschemöller and Cuppen 2015; Smith 2009). Under the lens of the TPF approach, this can be explained by linking the experience of interviewees regarding the regulatory focus on technical market operations to the tasks of policy formulation when the stakeholder consultation was used (demonstrated in Table 6.1).

Although the stakeholder consultation tool provided an opportunity for all to engage with the regulator, it was predominantly when the option assessment task was being undertaken that this tool was used. The experience of my interviewees would therefore suggest that the participatory tool of stakeholder consultation is limited by a lack of opportunity to engage in an equal manner when considering the role of ex-monopoly firms and other participants. Further, my analysis identified a lack of opportunities to engage in objective settings and problem characterisation opportunities were rare.

The implication of this finding for the extension of the capacity within the regulator to use stakeholder consultations in tasks of policy making is not straightforward. A large and diverse range of stakeholders regularly respond to Ofgem’s consultations.

Indeed, one publication specifically notes the challenges faced by Ofgem in processing an unexpectedly high number of responses to the Retail Market Review consultation (Ofgem 2012k). However, it is not clear whether policy formulation capacities at Ofgem were extended with the use of stakeholder consultations alone. The intention of participatory tools, in terms of the capacity of actors within institutions, is to bring new evidence from individuals and organisations who do not have a formal role in policy formulation (Cuppen et al. 2010; Hisschemöller and Cuppen 2015; Hisschemöller and Hoppe 1995; Smith 2009). Including diverse perspectives in policy formulation is the capacity of participatory tools, which are theoretically available to policy formulators and specifically sought by Ofgem (Ofgem 2012h). However, my analysis explains that between 2000 and 2016, consultations provided limited opportunities to challenge embedded ways of knowing. This finding is in line with research regarding government policy making in the UK (Chilvers 2010; Hoppe 2018; Pallett and Chilvers 2013).

While both ways of knowing consumers - engaging in the market and as vulnerable consumers - are visible in stakeholder consultations, where the outcomes can only respond to one of the two, the objective setting in 2001 appears to have had a more prominent role. The importance of maintaining a competitive market was reiterated even where Ofgem noted the negative impact of existing market structures on vulnerable consumers (Ofgem 2005e, 2012h). For example, in discussing a new licence condition to protect vulnerable consumers in 2009, Ofgem explained:

“We would need to be sure that such a condition is a proportionate measure and serves to help, rather than hinder, progress towards an effective competitive market.”

(Ofgem 2009e, p. 3)

Instead of incorporating diverse ways of knowing consumers, the stakeholder consultation tool maintained a focus on the two ways of knowing consistent throughout Ofgem's policy formulation: consumers engaging in the energy market and vulnerable consumers. It is notable that fairness of market outcomes and affordability challenges were a regular feature of consultation responses from stakeholders between 2000 and 2016 (Ofgem 2009d, 2012n, 2013d, 2016i). However, the capacity of the tool to bring together diverse views was not mirrored in the regulatory outputs within the regulatory venue of Ofgem. I go on to describe the way in which this, in turn, impacted the effects of the use of the stakeholder consultation tool in section 6.4.

6.3.3 Interacting Tools of Regulatory Policy Formulation

In applying the Tools of Policy Formulation (TPF) framework to my corpus, I identified two main tools of policy formulation between 2000 and 2016. These were indicators and participatory procedures used by analysts at Ofgem and CMA. Analysing the implications for how tools intersect in practice within a venue required more than descriptions of the individual tools, as within regulatory policy formulation the different tools interacted. In line with the procedures for a market investigation, the CMA issued reports based on their evidence gathering and provide an opportunity to comment on each report, culminating in regulatory policies in the form of orders (Competition and Markets Authority 2014, 2015b, 2016a, 2016b, 2016c, 2016d, 2016e, 2016f). The interaction of tools of policy formulation within Ofgem was more varied, as demonstrated in Table 6.3.

Table 6.3 Interacting Tools of Policy Formulation

	Indicator	Participatory - Focus Group	Additional Tool used	Participatory - Stakeholder Consultation	Regulatory Output
1	Treatment of Vulnerable Consumers (Ofgem 2000a)	➤		Social Action Plan (Ofgem 2000a)	➤ The Social Action Plan (Ofgem 2000b)
2	Retail Market Engagement (Ofgem 2001b)	➤	Participation - Public workshop	➤	Review of domestic gas and electricity competition and supply price regulation (Ofgem 2001b)
3				Making Markets Work for Consumers (Ofgem 2003a, 2003b, 2003d, 2003e)	➤ Making Markets Work for Consumers (Ofgem 2003c)
4	Treatment of Vulnerable Consumers (Ofgem 2001c, 2002, 2003f)	➤			Preventing debt and disconnection (Ofgem and Energywatch 2003)
5	Retail Market Engagement (Ofgem 2005b)			Domestic Market Review (Ofgem 2005b)	➤ Domestic Market Review (Ofgem 2005a)
6	Treatment of Vulnerable Consumers (Ofgem 2001c, 2002, 2003f, 2005d)	➤		➤ Social Action Strategy (Ofgem 2005f)	➤ Social Action Strategy (Ofgem 2005e)
7	Retail Market Engagement (Ofgem 2006, 2008d)	➤ Energy Market, Billing and Price Metrics (Ofgem 2009e)	Impact Assessment (Ofgem 2009b)	➤ Energy Supply Market Probe (Ofgem 2008c, 2009d, 2009c)	➤ Energy Supply Market Probe (Ofgem 2008, 2009b, 2009c, 2009a)
8	Treatment of Vulnerable Consumers (Ofgem 2007a, 2009j)	➤		Review of protections for vulnerable consumers from disconnection (Ofgem 2008a, 2009i)	➤ Notice of modifications of standard licence condition 27.11 (Ofgem 2010c)
	<i>Continued on p193</i>				

<i>Continuation of Table 6.2</i>					
	Indicator	Participatory - Focus Group	Additional Tool used	Participatory - Stakeholder Consultation	Regulatory Output
9	Retail Market Engagement (Ofgem 2010f)	Consumer views on Tariff Comparison Rates (TCRs) (Ofgem 2012b) Consumer engagement and trust in the energy market - Retail Market Review Reforms (Ofgem 2014d)	Impact Assessment (Ofgem 2011j, 2013j)	Retail Market Review (Ofgem 2011i, 2012n, 2012j, 2012m, 2013i)	Retail Market Review (Ofgem 2010f, 2011h, 2012k, 2012i, 2012o, 2013k, 2013g)
10	Treatment of Vulnerable Consumers (Ofgem 2012d, 2013f)	Priority Services Register (Ofgem 2013b)	Participation - workshops	Proposal for a new Consumer Vulnerability Strategy (Ofgem 2012h)	Consumer Vulnerability Strategy (Ofgem 2013c)
11	Treatment of Vulnerable Consumers (Ofgem 2013c, 2014b, 2015a)		Participation - roundtable		Decision to make modifications to the gas and electricity supply licences to reform the switching processes for indebted prepayment meter customers - the Debt Assignment Protocol (Ofgem 2015f)
12	Retail Market Engagement (Ofgem, Office of Fair Trading and Competition and Markets Authority 2014)			Consultation on a proposal to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain (Ofgem 2014b)	Market investigation reference in respect of the supply and acquisition of energy in Great Britain (Ofgem 2014a)
<i>Continued on p194</i>					

<i>Continuation of Table 6.2</i>					
	Indicator	Participatory - Focus Group	Additional Tool used	Participatory - Stakeholder Consultation	Regulatory Output
13	Treatment of Vulnerable Consumers (Ofgem 2015g, 2015e) ➔	Affordability, Environmental and Social Schemes (Ofgem 2014c) ➔	Impact Assessment (Ofgem 2016h)	Proposals to improve outcomes for prepayment customers (Ofgem 2015i, 2016g, 2016i) ➔	Prepayment meters installed under warrant: final proposals (Ofgem 2016f)
14				The future of retail market regulation (Ofgem 2016k) ➔	The future of retail market regulation (Ofgem 2016j)

In Table 6.3, I list the regulatory outputs between 2000 and 2016 where at least one tool of policy formulation was used. I connect each final regulatory policy to the way in which each regulatory output draws on tools of policy making in columns which indicate the use of the tools - indicators, the participatory tool of focus groups, the participatory tool of stakeholder consultations and others where relevant. Tracing the interaction of tools of policy formulation shows that regulatory policy formulation drew on a range of tools in the period studied. However, a single tool was rarely used by analysts at Ofgem in preparing a regulatory output. Instead, the majority of regulatory outputs included two separate tools: indicators and stakeholder consultations. Despite deliberative focus groups being used regularly as a participatory tool, they rarely appear within a regulatory output - visible only in four. Of the 14 regulatory outputs, only three did not include a consultation specific to that output (Ofgem 2001b, 2015f; Ofgem and Energywatch 2003). However, all have an alternative participatory tool and are connected to previous reforms or policies which did include a stakeholder consultation procedure (line 1, line 3, line 5-10 and line 12-14 in Table 6.3).

The stakeholder consultation was not only used as a tool in regulatory policy formulation, but also became the way in which the knowledges embedded in multiple tools - such as indicators and focus groups - were brought together to

evaluate problems, assess problems and design regulatory policies. Specifically, my analysis identified that stakeholder consultations were used to bring together a diverse range of knowledges at Ofgem. The majority of regulatory outputs that used tools (nine of the fourteen) saw the stakeholder consultation as the tool which brought together insights from multiple tools of policy formulation. This pattern is repeated in the CMA investigation, regulatory activities related to protecting vulnerable consumers and retail market reviews conducted at Ofgem. For example, in the Retail Market Review, Ofgem used four tools - impact assessments (Ofgem 2011j, 2012l), indicators (Ofgem 2010f) and deliberative focus groups (Ofgem 2012b, 2014d)- to evaluate problems in the energy market and assess options. However, it was the stakeholder consultations that brought these insights together in order to select options and design the policies that resulted from the regulatory activities, in their proposals and subsequent market reforms (Ofgem 2012i). This pattern of interacting tools is repeated consistently throughout the period examined in this study. The fact that stakeholder consultations were regularly used is not surprising given that their use is mandated by Government guidance (Department of Business, Innovation and Skills 2011). However, the interaction of the stakeholder consultation with other tools of policy formulation was not identified by previous research. My findings suggest that the stakeholder consultation had an important impact on the role of knowledges in regulatory policy formulation, in that between 2000 and 2016 they were frequently the point at which knowledges were gathered for evaluation and option assessment. Although my analysis identifies two ways of knowing consumers - engaging in the market and vulnerable consumers in debt - the pattern of interacting tools show that stakeholder consultations focus on the former. In other words, the stakeholder consultation played a role in filtering the impacts of ways of knowing that emerged from other tools.

6.4 Effects of Tools of Policy Formulation

The analysis of the role of policy formulation tools in regulatory activities shows multiple tools were used between 2000 and 2016. However, they were not used equally in terms of regularity of impacting regulatory outputs. In this section, I explain the implications of these findings with regards to the effects of tools use. Tools of policy formulation can have two types of effects, procedural and substantive (Jordan and Turnpenny 2015; Turnpenny et al. 2009). Each tool of regulatory policy formulation I have identified as regularly being used between 2000 and 2016 - indicators and participatory tools - have the potential for impacting the formulation procedures related to procedural effects and the adoption of new knowledges and policy outcomes associated with substantive effects (Hisschemöller and Cuppen 2015; Hisschemöller and Hoppe 1995; Lehtonen et al. 2016; Sébastien et al. 2014; Smith 2009). However, while I identified procedural effects of tools, there were few examples of substantive effects of tool use.

Procedural effects can identify the role of knowledges within procedures of policy formulation. Procedural effects - the impact of the use of a tool on the procedures of conducting policy formulation tasks - are evident from all three of the indicators identified in section 6.3.1. First, indicators provided the basis for beginning the task of problem evaluation in twelve of the fourteen regulatory outputs that formed the basis of Ofgem's activities (as demonstrated in Table 6.3). Indicators used at Ofgem increased the analytic capacity of policy formulation actors by bringing together data from multiple sources, to regularly monitor outcomes of regulatory policy-making. Second, deliberative focus groups contributed to the procedures that performed the task of option assessment on four occasions. While this is less regular use than indicators, interviewees identified them as providing important insights and deliberative focus groups were held regularly from their introduction in 2007 through the period studied. Third, the participatory tool of stakeholder consultation

had a significant procedural effect. It was used in the majority of procedures of regulatory activities between 2000 and 2016 and, when used, brought the findings from other participatory tools and indicators together to conduct the tasks of problem evaluation and option assessment. For example, in the case of Ofgem's Retail Market Review, the stakeholder consultation tool was also used to apply the findings of indicators regarding energy market engagement and focus group findings that assessed options in policy design (Ofgem 2011h, 2012b, 2013k). My analysis suggests it was therefore the most significant tool of policy formulation at Ofgem. However, it is not clear that the use of stakeholder consultations secures the extension in capacities that is embedded within a participatory tool - bringing together diverse perspectives to include a range of knowledges in policy formulation. Identifying the procedural effects of tools provides insight into the presence of a range of knowledges that might be available to policy formulation actors through the use of such tools.

My analysis of how tools and venues intersected in practice show that the use of tools which *could* ensure inclusive procedures. If this were the case, the knowledges brought together by tools of policy formulation would have identifiable substantive effects. Substantive effects relate to the extent a policy formulation tool achieves change in a policy field, linked to a different set of knowledges (Turnpenny et al. 2009). From my analysis, it is not clear that the use of policy formulation tools had systematic substantive effects between 2000 and 2016. I have identified only two regulatory outputs which provided the potential for substantive effects from using tools of policy formulation. These were: the change to considering consumers as irrational, based on insight from behavioural economics; and the change to consider adopting a more universal definition of vulnerable consumer (Ofgem 2012i, 2013c). Both of these potential substantive effects saw the use of participatory tools - a combination of deliberative focus groups and

stakeholder consultations (Ofgem 2013k, 2013c). Each of these new ways of understanding consumers had a procedural effect in that they led to adapted indicators to measure the outcome of regulatory decisions (Ofgem 2015j, 2015e). However, the presence of diverse knowledges through a procedural effect does not necessarily result in a substantive effect.

Moreover, changes in the regulatory policy field of energy supply markets in GB have been limited. I therefore conclude that there was a substantive effect in terms of knowing consumers in the behavioural sense. However, the resulting regulatory policy output was short lived. As discussed in Chapter 4, the CMA Energy Market Investigation overturned the Retail Market Review implementation, arguing that it had an adverse effect on competition (Competition and Markets Authority 2016b; Ofgem 2016a). It is less clear whether the change to a universal understanding of vulnerability had a substantive effect. As demonstrated in Chapter 4, no new rules that impacted energy supply markets were introduced as a result of the Vulnerable Consumer Strategy which contained a new definition (Ofgem 2013c). On the other hand, the new definition was cited as part of the background of the regulatory output regarding PPM installations (Ofgem 2016f), though not in the implementation of the new rules (Ofgem 2016h). Further, the definition was included in the voluntary code introduced by the energy firm's industry body which was endorsed by Ofgem (Energy UK 2016). This new definition did, therefore, result in a substantive effect in an informal venue of policy formulation, which had the possibility of impacting energy supply firm behaviour. In the period analysed it did not, however, have substantive effects within Ofgem or play any role in the CMA Energy Market Investigation.

It is difficult, therefore, to conclude from my analysis that the intended consequences of using participatory tools were secured within regulatory policy formulation between 2000 and 2016. First, focus groups with members of the public

had a limited impact. In 2007, Ofgem stated that they intended members of the public to have a role in Ofgem's deliberations. However, the constrained scope of topics and limited use of evidence from focus groups in decision-making meant that the impact on the operation of the energy market was limited. Second, stakeholder consultation tools which are described as providing an opportunity for all to participate in regulatory procedures, were seen to provide a disproportionate opportunity for well-resourced energy supply firms to participate. As a result, participatory tools of regulatory policy formulation provided Ofgem with an opportunity to extend the scale of evidence to assess options within a limited selection of outcomes that were in line with their pre-existing aims of retail market development. In 2016, Ofgem acknowledged the diverse needs of consumers but maintained their vision for positive outcomes for consumers from regulation:

“In the retail market, we consider that these outcomes are best achieved through competition and a more efficient, innovative market, comprised of empowered and engaged consumers.”

(Ofgem 2016j) p. 4

While diverse knowledges from a range of participants were visible in responses to stakeholder consultations, the opportunity for substantive effects from using the participatory tool were ultimately unsuccessful in challenging the overarching focus of Ofgem. Instead, the objective set in 2001 of enabling the functioning of a competitive market was maintained.

6.6 Conclusion

The features of regulatory policy formulation between 2000 and 2016 presented in this chapter explain *how* specific knowledges had a more prominent role than

others. Systematically used in tools of policy formulation throughout the period were two ways of knowing consumers. First, consumers were known in terms of their engagement in the market and therefore, their need for information. The type of information required and the way that consumers might engage was the topic for eleven waves of focus groups, made up seventeen stakeholder consultations and the level of engagement was monitored through indicators. Second, consumers were known as vulnerable in terms of their experiencing the outcomes of the behaviour of energy suppliers. This was the topic of four waves of focus groups, made up part of seven stakeholder consultations and experiences related to debt collection and identification of vulnerability was monitored by indicators for the full period analysed.

This study set out to identify whether concerns regarding fairness and affordability from the public and their elected representatives were visible in policy formulation or had an effect. This might have been expected to result from the use of participatory tools - tools of policy formulation designed specifically to bring diverse knowledges into procedures (Beierle 2010; Hisschemöller and Cuppen 2015; Hoppe 2018; Smith 2009). This expectation of ways of knowing from beyond the regulator to play a role in policy formulation is set out by Government for stakeholder consultations (Department of Business, Innovation and Skills 2011) and was a specific aim of Ofgem in conducting deliberative focus groups (Ofgem 2011b). However, I identified few effects of these participatory tools between 2000 and 2016. Further, my analysis revealed multiple occasions when fairness and affordability were topics and where tools were used to formulate policy in indicators (Ofgem 2015j, 2016b), deliberative focus groups (Ofgem 2010a, 2014c) and stakeholder consultations (Ofgem 2009d, 2009g). However, none of these engagements had a substantive effect on regulatory policy formulation.

I have provided an explanation for the limited effects in terms of *how* policy is formulated, by identifying the limited range of tasks that are conducted by regulators. While there was a significant number of tasks relating to problem evaluation, option assessment and policy design, none of these provided the opportunity to challenge embedded ways of knowing. Interviewees described the result as a technocratic discussion of the operation of markets which only provided a limited role for knowing consumers beyond their purchasing decisions. An exception to this pattern was the problem characterisation undertaken in the Consumer Vulnerability Strategy of 2013 (Ofgem 2013c). While this output itself had limited effects, this finding implies that an important influence on the role of knowledges in regulatory policy formulation, is the way in which problems are understood within Ofgem.

By identifying the sole objective setting task of policy formulation and single problem characterization task, I have shown how few opportunities there were to engage in discussions regarding the problems facing people who use energy in their homes. Instead, policy formulation tasks were conducted in line with ways of knowing consumers that were already embedded in Ofgem, despite the introduction of new statutory powers.

Participatory tools in particular were introduced to ensure policy formulation benefitted from multiple perspectives (Beierle 2010; Fischer 2000; Smith 2009). However, any substantive effects were limited as Ofgem maintained its objectives as set out in 2001: to introduce a functioning retail energy market. This constrained the role of knowledges in its regulatory policy outputs, unless they were in line with the pre-existing expectations of consumers in market engagement activities. Even though indicators highlighted vulnerable consumer experiences and a new definition which incorporated a broad range of individuals was included in the regulatory policymaking, ultimately they did not result in a change in regulation.

Nonetheless, participatory tools played a significant role in the activities of energy regulation between 2000 and 2016. Stakeholder consultation exercises also provided the opportunity for evidence and perspectives from beyond the regulator. As I explained in section 6.3.2, Ofgem and the CMA both secured a large number of perspectives from a diverse range of organisations in response to stakeholder consultations. The extent to which this capacity was realised within regulatory policy formulation in this period, differs between the two participatory tools regularly used: deliberative focus groups and stakeholder consultations.

Deliberative focus groups were seen to meet the aims set out by Ofgem in their design - in that they provided Ofgem with the opportunity to understand the perspectives of members of the public. However, as demonstrated in Table 6.3, the opportunity was limited by the topics that were discussed.

This analysing of policy formulation tools has also provided insight in terms of the relative role that different groups engaging with Ofgem played in regulatory policy formulation. Through investigating the venues of policy formulation, I identified the informal venue of policy formulation in the industry body for energy supply firms. Further, participants in the stakeholder consultation procedures described the relative benefits that energy supply firms secured through a greater level of resources and long-term relationships. This poses a direct challenge to the aims of participatory tools in providing an equal opportunity for all to engage in regulatory policymaking. This analysis does not, however, explain *why* these ways of knowing maintained their role during a period which included changes in statutory powers. Further, with its focus on policy procedures it does not fully explain *why* these policy procedures resulted in an energy market that was characterised by so many as unfair.

Further, this analysis of policy formulation or tools has not explained *why* particular knowledges played a role. Problem evaluation and option assessment were

sufficient for a new way of knowing consumers as “irrational” to have a substantive effect in the Retail Market Review (Ofgem 2012i) . However, this was not the case for a new definition of the vulnerable consumer. I therefore used the “What is the Problem Represented to Be” (Bacchi 2009b) framework to identify problem representations and their impact on regulatory policy formulation. The findings are presented in the next chapter.

Chapter 7 - What is the Problem Represented to Be in Energy Market Regulation in GB 2000 - 2016

7.1 Introduction

GB energy market regulation between 2000 and 2016 included a series of regulatory policies that aimed to deliver benefits to people who use energy in their homes through competitive markets (Competition and Markets Authority 2015a, 2016b; Ofgem 2008d, 2009f). As described in Chapter 4, these regulatory reforms included regulatory policy proposals that described the expectations of the economic regulators, Ofgem and the CMA. In Chapter 5, I identified the failure of energy market regulation between 2000 and 2016 to deliver equal benefits of competitive markets to people who use energy in their homes. Instead, analysis using the Energy Justice framework revealed that regulatory policies, even those that specifically set out to fairly distribute the benefits of a competitive market, failed to do so for some of the most vulnerable groups in society (Competition and Markets Authority 2016b). As a result, comparatively more affordably priced energy failed to benefit all equally.

In this chapter, I explain a central reason *why* these regulatory policies failed by presenting my analysis of “What the Problem is Represented to Be” (WPR), in line with the analytical framework proposed by Bacchi (2012). The framework enabled me to identify how people who use energy in their homes were “known” in regulatory policy formulation: how they were understood, conceptualised and predicted to act. This in turn helps to explain how regulatory policies largely failed to benefit energy consumers. Further, it begins to explain the gulf in expectations between the public, and their representatives in parliament, and regulatory policies

described in Chapter 1. My explanation draws on the insight provided when using the WPR framework described initially in Chapter 3. Specifically, understanding problem representations can reveal how certain groups of people benefit from a particular policy or set of policies (Bacchi 1999, 2012; Schneider and Ingram 1993; Schneider et al. 2005). This analysis of the policy proposals of GB energy market regulations from Ofgem and the CMA identifies an implicit problem of representation which constrained the role of knowledges between 2000 and 2016.

7.2 What is the Problem Represented to Be in GB Energy Regulation 2000 - 2016?

In this section, I describe the categories, characteristics and concepts that were active within the 41 regulatory policy outputs between 2000 and 2016, regarding energy supply markets for residential energy consumers described in Chapter 4. These 41 outputs are the texts that contain the regulatory policies proposed and implemented by Ofgem and the CMA in this period. The three features - categories, characteristics and concepts - each explain the ways in which groups or individuals are understood within policy procedures (Bacchi 2009b). Under the WPR approach, categories are labels given to groups or types of individuals; characteristics are the features that define a category; and a concept is the constructed idea that emerges from categorising and characterising people in a particular manner (Bacchi 1999, 2012, 2017; Bletsas and Beasley 2012). I traced the use of these categories, characteristics and concepts within regulatory policy formulation to reveal the problem representations within energy market regulation between 2000 and 2016. In this chapter, I address “What the Problem is Represented to Be” by drawing on my analysis of regulatory policy outputs, alongside the interviews I conducted with participants in regulatory policy formulation. Finally, I describe the attempts to challenge the embedded problem representations of regulatory policy between 2000 and 2016.

7.2.1 Categories, characteristics and concepts

Between 2000 and 2016, five categories of people used energy in their homes. These are described in Table 7.1 below. In this section, the categories, concepts and characteristics that underpin how consumers are known are identified within regulatory policy outputs. An overarching pattern of 4 of the categories is the characteristic of people as customers of an energy supply firm. These characteristics repeatedly result in a concept based around the activities of purchasing from a firm.

Table 7.1 Categories, characteristics and concepts from energy market regulation 2000 - 2016

	Category	Characteristic(s)	Concept(s)	Output(s)
1.	Consumer in energy market	<ul style="list-style-type: none"> - Potential Purchaser - Customer of energy firm - Active and engaged (minority) - Inactive, unmotivated, uninformed, sticky (majority) 	Purchasing Consumer	Full list of outputs from Table 4.1
2.	Pre-Payment (PPM) Customers	<ul style="list-style-type: none"> - Customer of energy firm - Debtor - Low Income - Costly (to energy supplier) - Inactive, unmotivated, uninformed, sticky in market 	PPM Consumer	(Competition and Markets Authority 2016e, 2016b; Ofgem 2000b, 2005e, 2008a, 2008d, 2009h, 2009g, 2011h, 2012h, 2013c, 2015h, 2015e, 2016f)
3.	Vulnerable Consumer	<ul style="list-style-type: none"> - Customer of energy firm - In need of support - Debtor - Elderly - Low Income - Rural home - Chronic illness - Disability - Child under 5 in property 	Vulnerable Customer I (Registered Priority)	(Ofgem 2000a, 2000b, 2005e, 2008a, 2009h, 2012h, 2013c, 2015e)
4.	Vulnerable Consumer (2013 onwards)	<ul style="list-style-type: none"> - Customer of energy firm - Equalities Act protected characteristics - Dynamic vulnerability 	Vulnerable Consumer II (transient and registered)	(Ofgem 2012h, 2013c, 2015e)
5.	Fuel Poor households	<ul style="list-style-type: none"> - Government defined target group for social schemes 	The Fuel Poor	(Ofgem 2000b, 2005e, 2012h, 2013c, 2015e)

The first category of people who use energy in their homes is that of an energy consumer. As described in Chapter 1, the construction of the energy market is such

that this is the primary manner in which people are understood within economic regulation. This is clearly visible within my corpus, with all regulatory outputs using this category. The characteristic that is associated with the category of consumer is that of an individual who is a customer of an energy supply firm. This individual is a decision-maker who is a potential purchaser of energy supply services from different energy firms. The category of consumer is linked to characteristics regarding market activity - actions taken by the individual decision-maker to compare energy supply firms and act to change product or switch energy supplier based on that comparison (Competition and Markets Authority 2014, 2016b; Ofgem 2003c, 2004b, 2008d, 2011h, 2014a). This was articulated repeatedly between 2000 and 2016 by regulatory outputs, all of which reflect this summary from 2012:

“Engagement requires consumers to be able and have an incentive to:

Access relevant market information;

Assess the offers available to choose what is best, as well as,

Act on their assessment of the information.”

(Ofgem 2012k) p17

However, as my evidence across the entire period taken from within Ofgem has shown that the majority of consumers did not engage with the market in the way that the concept of the consumer assumes (Competition and Markets Authority 2015a, 2016b; Ofgem 2003b, 2004b, 2008d, 2011h). This finding is reiterated by repeated surveys of energy consumers between 2000 and 2016. The Competition and Markets Authority notes that its survey:

“... provides material evidence of domestic customers’ lack of understanding of, and engagement in, retail energy markets.”

(Competition and Markets Authority 2016b, p. 22)

The repeated findings that purchasing consumers are not universally actively acting on their information assessments, sees the broadening of the concept to incorporate individuals who report that they do know that they could engage in the market but refrain from doing so (Competition and Markets Authority 2015a, 2016b; Ofgem 2003b, 2008b, 2010f, 2016b). This means that the concept of purchasing consumer includes individuals who are inactive in the market but are potentially active consumers. This is reiterated by interviewees from regulators, energy firms and consumer organisations. One interviewee explained:

“I think we can reasonably define consumers as ordinary members of the public in their roles as purchasers and users of goods and services.”

Ad8 (in line with RG1, RG2, RG3, RG4, RG5, RG6, RG8, Re7, Ma2, Ma5)

The concept of consumer adopted in the Retail Market Review was broadened by a contemporary understanding of consumers as ‘irrational’ from behavioural economics (Ofgem 2011k). This underlying characteristic from behavioural economics was a significant challenge to the assumption that consumers are rational, implicit in the regulatory outputs of Ofgem and its predecessors. Rather than an assumption of rationality there was an expectation of irrationality. This approach proposes that consumers need to be communicated with in certain ways at certain times if they are to benefit from a market. In 2014, Ofgem stated:

“Consumers in the GB energy retail markets exhibit a number of behavioural biases - as they do in other markets. However, complex tariff information and poor comparability between suppliers’ tariffs increase the impact of these biases. These features of the markets are likely to make consumers disengage more, or make poor switching decisions. These tendencies significantly reduce the extent to which the current market is delivering the full benefits from competition.”

(Ofgem 2011k, p. 16)

The additional characteristic of irrationality did not, however, overturn the characteristic of requiring information. Instead, the deficit in information held by the consumer was seen as pointing to the need to incorporate capacities for engaging with that information:

“Some consumers deal with their limited capacity for assessing information by only engaging in the markets when it is simple to do so”

(Ofgem 2012k, p. 6)

The second category of people who used energy in their homes was the Pre-Payment Meter (PPM) Customers, people who had a PPM in their home. A PPM is an electricity or gas meter that will only supply energy where payment is received by the energy supplier in advance. This metering type is associated with homes where there is, or has been historically, a time when an individual has been in debt to their energy supplier. The PPM technological infrastructure of payment systems added an additional cost of supplying energy to homes with this metering type. The category of PPM Customer was therefore associated with a central characteristic of indebtedness to an energy supply firm. An energy customer who was in debt by over £200 to their energy supplier was not able to switch energy supplier until 2012, at which point the six largest suppliers agreed voluntarily to increase the amount to £500 (Energy UK 2016; Ofgem 2015f). The Competition and Markets Authority noted in 2016 that:

“Prepayment not generally a choice on the part of the customer: all customers on prepayment meters must pay by prepayment. Prepayment meters are generally installed where a customer has a poor payment history or in specific types of accommodation such as holiday homes and student accommodation.”

(Competition and Markets Authority 2016b, p. 377)

The concept that emerged from this characterisation - a PPM Consumer - was therefore associated with a lack of engagement in the market that must be corrected. Regulatory policy outputs acknowledged that the increased barrier to switching and the costs of the payment systems, resulted in affordability challenges, resulting in some overlap between the concept of the PPM Consumer of consumers, who could also be defined as ‘vulnerable’. For example, the CMA noted in 2016:

“We also note that prepayment customers include, compared to the entire population, higher proportions of individuals: with low levels of income; with low levels of education; living in social rented housing; and having a disability - demographic characteristics that we have found to be associated with low levels of engagement in retail energy markets.”

(Competition and Markets Authority 2016b, p. 529)

The definition of ‘vulnerable’ in energy market regulation between 2000 and 2016 relates to three further categories linked to problems with accessing affordable energy (2 - 5 in Table 7.1).

The third category of people who used energy in their homes within regulatory policy outputs was the Vulnerable Consumer, as set out in the Utilities Act of 2000. These consumers were characterised as customers of energy supply firms who were in need of more support than an “average” consumer. The statutory definition included households where one person was over 65 or under 5, had a chronic illness, was disabled, lived in a rural location or was on a low income. This final stator characteristic - low income - led to the additional characteristic of being in debt to an energy supply firm. This earlier concept of Vulnerable Consumer is one

that emerges from a set of expectations about supporting a minority of consumers who can be straightforwardly identified and whose needs can be registered (Ofgem 2000b, 2005e). The concept that relates to the Vulnerable Consumer as defined in statute is most significant in regulatory outputs between 2000 and 2012 (therefore indicated as Vulnerable Consumer I) before being changed in 2013.

From 2013 onwards a new characterisation of Vulnerable Consumer (Vulnerable Consumer II) was introduced by Ofgem (Ofgem 2012h, 2013c) . Though still characterised as customers of energy supply firms and including the categories described by statute (Utilities Act 2000), this category was expanded to include consideration of a further 28 characteristics that might mean a consumer was vulnerable.

In this characterisation, vulnerability is associated with a set of circumstances that can affect anyone at some point, rather than a characteristic of an individual. However, the risks also extend to the circumstances facing an individual, the extent of an individuals' awareness of their vulnerability and the nature of the purchase of energy services. The move beyond the capacities of the individual to their circumstances, incorporated a consideration of the context that individuals were living in. It moved beyond a narrative of the ability of an individual. Further, it incorporated the consideration that an individual might not reasonably be assumed to have identified the specific nature of their vulnerability with regards to the energy market, in order to ensure their supplier was aware of this. Finally, it made a link beyond the energy market with the Office of Fair Trading discussion about situational or transactional vulnerability (Office of Fair Trading 2008). In total, Ofgem listed 28 factors that should be considered when conceptualising consumer vulnerability. However, it noted that these 28 factors were not exhaustive and summarised its new definition of Vulnerable Consumer as follows:

“While recognise that any consumer can face detriment in a market, our work under this Strategy focuses on those consumers in vulnerable situations who are most in need of protection or support. For this purpose we have defined vulnerability as when a consumer’s personal circumstances and characteristics combine with aspects of the market to create situations where he or she is: Significantly less able than a typical consumer to protect or represent his or her interests in the energy market; and/or Significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial... The characteristics, capacity and circumstances of individuals can change over time. Vulnerability can affect anyone at any time and for many different reasons. It may be permanent or long-term; but equally it can be transitory”

(Ofgem 2013c, p. 4)

The concept that is constructed by these characteristics is a relative one that takes into consideration the energy needs of an individual customer of an energy supply firm in relation to that person’s circumstances. Ofgem summarised their new definition as:

“When a consumer’s personal circumstances and characteristics combine with aspects of the market to create situations where he or she is:

Significantly less able than a typical consumer to protect or represent his or her interests in the energy market;

and/or Significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial”

(Ofgem 2013c, p. 4)

The fifth and final category present in regulatory policies are fuel poor households, although the regulatory outputs I analysed did not engage in any detail with this

group. Ofgem's regulatory outputs simply noted that they had guidance from the Secretary of State to consider fuel poor households (Ofgem 2000b, 2005e, 2013c) and from 2009, they monitored energy supply firms' delivery of energy efficiency delivered programmes aimed at supporting the fuel poor (Ofgem 2013c, 2015e). However, Ofgem did not characterise this group. Instead, this category was defined by the UK Government and Ofgem took no role in conceptualising this group (Department of Energy and Climate Change 2012).

7.2.2 What is the Problem Represented to Be?

In the following section, I describe the problem representations in 17 regulatory policies contained in the regulatory outputs first described in Chapter 4. There were multiple outputs within the same overarching policy. These regulatory policies are described in the first column of Table 7.2. Between 2000 and 2016 there were three common problem representations: the knowledge of staff in regulators; the behaviour of decision-makers in energy supply firms and the behaviour of consumers. Each problem representation draws on concepts that were visible in the data collected in my thesis and are described in Table 7.1. I connected these concepts to problems and regulatory policies to unpack how these were interrelated, as I go on to describe below. Importantly, I demonstrate that there was an important pattern of problem representations in terms of whether a regulatory policy had an impact on the rules that governed the operation of the energy market.

Table 7.2 Problem representations in energy market regulation 2000 - 2016

	Regulatory Policy	Problem	Concept	Rules*	Reference
1	Publish information regarding energy supply firm conduct and outcomes	Regulator knowledge	Consumer as purchaser	N	(Competition and Markets Authority 2016b; Ofgem 2000b, 2004b, 2005e, 2009f, 2012i, 2013c)
2	Encourage good practice through publication of regulatory reports regarding debt collection practices	Regulatory knowledge	Vulnerable Consumer I & II, Fuel Poor	N	(Ofgem 2000b, 2005e, 2008a, 2013c; Ofgem and Energywatch 2003)
3	Create network of experts to support regulatory policy insight regarding vulnerable energy consumers	Regulator knowledge	Vulnerable Consumer I & II, Fuel Poor	N	(Ofgem 2012h, 2013c, 2015e)
4	Retail Market Competition is required to drive lower prices	Energy firm behaviour	Consumer as purchaser, PPM Consumer	Y	(Ofgem 2001b)
5	Endorse energy supply firm voluntary code of practice	Energy firm behaviour	Consumer as purchaser	N	(Ofgem 2003c, 2015f; Ofgem and Energywatch 2003)
6	Adapt definition of vulnerable consumers to dynamic circumstances as well as individual characteristics	Energy firm behaviour	Vulnerable Consumer II, Fuel Poor	N	(Ofgem 2012h, 2013c)
7	Rules-based regulation replaced by principle-based regulation	Energy firm behaviour	Consumer as purchaser	N	(Ofgem 2016j)
8	Publish principles of behaviour for energy supply firms	Energy firm behaviour	Consumer as purchaser	N	(Ofgem 2009f)
9	Introduce rules on the principles of behaviour for energy supply firms	Energy firm behaviour	Consumer as purchaser	Y	(Ofgem 2013g)
10	Correct differences in prices on basis of type of meter or geographical location	Energy firm behaviour	Consumer as purchaser	Y	(Ofgem 2009a, 2009b)
11	Remove rules that correct differences in prices on basis of geographical location	Energy firm behaviour	Consumer as purchaser	RR	(Ofgem 2010c)
12	Ensure domestic consumer is not vulnerable before disconnection of energy supply	Energy firm behaviour	Vulnerable Consumer I & II	Y	(Ofgem 2008a, 2009h, 2010e)

<i>Continuation of Table 7.2</i>					
	Regulatory Policy	Problem	Concept	Rules*	Reference
13	Cap PPM prices	Energy firm behaviour	PPM Consumer	Y	(Competition and Markets Authority 2016e)
14	Cap PPM installation charges	Energy firm behaviour	PPM Consumer	Y	(Ofgem 2016f)
15	Limit number of tariffs available to consumers	Consumer inactivity	Consumer as purchaser	Y	(Ofgem 2013k)
16	Remove rules to limit number of tariffs available to consumers	Consumer inactivity	Consumer as purchaser	RR	(Competition and Markets Authority 2015a, 2016b)
17	Specify timing and content of information shared by energy supply firms with consumers	Consumer inactivity	Consumer as purchaser	Y	(Competition and Markets Authority 2016b, 2016b, 2016d, 2016f; Ofgem 2003a, 2009f, 2011g, 2012e, 2012i, 2012o, 2013h, 2013j)

*Rules - where enforceable rules that changed energy market regulation introduced as a result of this regulatory output - Yes (Y), No (N) or was a rule removed (RR)

The first problem represented in regulatory outputs between 2000 and 2016 was the knowledge of staff in regulators. This problem is in regulatory outputs from the full period analysed and is implicit in the solution presented in multiple regulatory policies: increasing the data available to and expertise of staff who develop regulatory policies (Ofgem 2003c, 2005a, 2008d, 2011h). A lack of data is explained to be problematic where staff at the regulator sought to evaluate energy firm activities and their outcomes (1 and 2 in Table 7.2). The solution to this problem was more extensive use of the regulators' information gathering and publication powers (Ofgem 2000b, 2004b, 2005c, 2009i, 2012n, 2013c; Ofgem and energywatch 2003). While this did not result in new rules in the energy market per se, it aimed to ensure that the regulator could enforce existing rules. For example, Ofgem explained in 2010:

“We work with suppliers to find out what they are doing that has resulted in these trends, to help identify good practice and identify areas for improvement. We also use this data to ensure that suppliers comply with our rules, to challenge poor

performance, and to inform policy. We will take enforcement action if necessary, as described in our Enforcement Guidelines.”

(Ofgem 2010g, p. 7)

Following the Competition and Markets Authority investigation, the monitoring and publication conducted by Ofgem was extended to consider not only energy supplier activities but also their outcomes. Further, publication was to extend to include the distribution costs in the energy market.

“We recommend to Ofgem that it publishes annually a state of the market report which would provide analysis regarding issues such as the evolution of energy prices and bills over time; the profitability of key players in the markets; the social costs of policies and distributional impacts arising from them; and the impact of initiatives relating to decarbonisation and security of supply. We are also recommending the creation of a team within Ofgem to take this work forward.”

(Competition and Markets Authority 2016b, p. 76)

This resulted in the creation of the new “Office for the Chief Economist” department to deliver the economic analysis of the energy market in line with the CMA’s recommendation to ensure that the impact of regulation on the energy market were fully understood by staff within the regulator (Competition and Markets Authority 2016b).

In 2012, the problem of regulatory staff’s lack of knowledge is described in a very different way to a lack of data (line 3 in Table 7.2). Instead, Ofgem referred to a lack of expertise regarding the lived experiences of energy vulnerability (Ofgem 2012h):

“We propose to establish a Consumer Vulnerability Network to develop our connection with grassroots organisations that work with consumers in vulnerable positions. The network will assist us in developing future policy in this area and in understanding more fully the issues that face consumers when interacting with the energy market.”

(Ofgem 2012h, p. 5)

The solution proposed for this problem was to set up a network of charitable organisations that could share insights regarding the impact of energy regulation. Whether this network would have impacted regulatory outputs and changed the knowledge regulatory staff is not known, as the proposed network was not created.

The second representation problem in regulatory outputs between 2000 and 2016 is the behaviour of decision-makers in energy supply firms (4 to 12 in Table 7.2).

References to attempts to steer the behaviour of decision-makers in energy supply firms dominate the regulatory outputs. This aligns with concerns from the public and their elected representatives regarding energy supply firms (Becker et al. 2019; Demski et al. 2017; House of Commons Select Committee on Energy and Climate Change 2013). However, regulatory outputs that focus on the problem representation of decision makers in energy supply firms, do not universally result in new regulatory rules, i.e. supply licence conditions. Instead, as described in Chapter 4, the regulator did the following: it published principles that it encouraged energy suppliers to adopt in decision-making in the Energy Supply Market Probe (Ofgem 2009f); it endorsed voluntary codes (Ofgem 2003c, 2015f; Ofgem and Energywatch 2003); it encouraged firms to consider energy vulnerability as dynamic in their interactions with customers (Ofgem 2013c); and finally, in 2016, it argued for a style of regulation that set out principles instead of rules (Ofgem 2016j). As illustrated in Table 7.2 (line 4 - 7), this included 4 of the 11 of the

regulatory policies that adopted the problem representation in terms of the behaviour of decision makers in energy firms.

There were, however, five regulatory outputs that did introduce enforceable rules as a solution to the problem of decision makers in energy supply firms. First, the Energy Supply Market Probe introduced new rules to stop energy supply firms charging higher prices to consumers who lived in geographical areas that had been the location of their ex monopoly (line 10 in Table 7.2). However, as described in Chapter 4, this rule was removed (line 11 in Table 7.2) following evidence that this led to decision-makers in energy supply firms charging higher prices to consumers outside of their ex monopoly area, rather than lowering the prices for those in their ex monopoly area (Hviid and Price 2012; Ofgem 2010c).

There is also an example where a regulatory decision not to introduce a rule was later overturned (lines 8 and 9 in Table 7.2). This was the introduction of principles for the behaviour of energy supply firms, which were introduced into the supply licence by the Retail Market Review in 2011 (Ofgem 2013g).

Finally, the regulator acted to introduce a rule that energy supply firms should not disconnect the home of a consumer without confirming the circumstances of those living in the property (Ofgem 2010c). This rule incorporated the problem representation of the decision makers within the energy supply firms by proposing a solution to the problem of disconnection from energy supply of vulnerable consumers (Ofgem 2008a). However, details of what steps should be taken to confirm the circumstances of people living in a property were not specified in this rule; they were instead described by a voluntary code endorsed by Ofgem (Energy UK 2016; Ofgem 2008a).

Two regulatory policies clearly did result in new rules on the basis of the problem represented as the behaviour of decision makers in energy supply firm: the removal

of price regulations to introduce full market competition (Ofgem 2001b) and rules to protect PPM consumers (Competition and Markets Authority 2016e; Ofgem 2016f). As described in Chapter 4, a theoretical assumption of the introduction of competitive markets was that consumers switching energy suppliers would lead to incentives for firms to behave well (line 12 in Table 7.2). Without that pressure, energy supply firms would abuse their market power. Ofgem explained:

“The abuse of market power may be one of the factors that stops effective competition developing. Hence it is important that any such abuse is prevented. If there is effective competition, over time, competition can be expected to lead to innovation, since successful innovation will be properly rewarded, and improved economic efficiency.”

(Ofgem 2001b, p. 12)

This problem representation that sees competition as central to controlling the behaviour of decision-makers in energy supply firms, is also highly visible in the second area where rules were introduced: the treatment of PPM consumers (line 13 and 14 in Table 7.2). In 2016, Ofgem and the CMA independently reviewed aspects of the energy market for PPM consumers. The CMA argued that:

“Our view is that a combination of features concerning energy supply specifically to the prepayment segments gives rise to an AEC [Adverse Effect on Competition] through reducing suppliers’ ability and/or incentives to compete to acquire prepayment meter customers and to innovate by offering tariff structures that meet customers’ demand (the Prepayment AEC). These features are certain technical constraints limiting the number of tariffs that suppliers can offer to customers on dumb prepayment meters and softened incentives for all suppliers, and in particular new entrants, to compete to acquire all prepayment customers, whether on smart or dumb prepayment meters arising from actual and perceived

higher costs to engage with, and acquire, such customers and a lower prospect of successfully completing the switch of indebted customers.”

(Competition and Markets Authority 2016b, p. 40)

The problem was predominantly represented by the CMA as energy supply firm decision-makers failing to compete to attract PPM consumers due to PPM infrastructure, resulting in PPM consumers not benefitting from competition. A temporary price cap was therefore introduced while the infrastructure was replaced (Competition and Markets Authority 2016e). Implicit to this argument was that when the infrastructure allowed competition, the price cap would not be needed, as the behaviour of decision-makers in energy supply firms would be constrained in the same way as the rest of the energy market - by consumers engaging in the market (Competition and Markets Authority 2016b). Ofgem’s regulatory review of the PPM market noted the CMA’s ongoing investigation and focused on the charges associated with the installation of a PPM. They concluded that the behaviour of decision-makers in energy supply firms was harmful in that they charged unjustifiable fees to install a PPM, using a warrant. Ofgem explained the finding that:

“The overwhelming majority [of energy suppliers] (16 out of 18) charge for warrant-related costs such as court costs, warrant application cost, dog handlers, and locksmiths. These costs range from £75.00-£566.00, which can be considerably more than the original debt owed by the customer.”

(Ofgem 2016f, p. 33)

Ofgem therefore concluded that the solution to this problem was a new rule that capped fees for the forced installation of a PPM at £150. By the end of the period analysed in my thesis, this new rule meant that of 17 regulatory policies only 3

resulted in rules that changed energy market regulation, where the problem was represented to be the behaviour of decision-makers in energy supply firms.

The 11 regulatory policies (4 to 13 in Table 7.2) that were based on a problem representation related to decision-makers in energy supply firms, saw a mix of responses from Ofgem between 2000 and 2016. Solutions to the problem of incentives for good behaviour included some rules but a range of reporting and voluntary codes of conduct. Notably, by 2016 only three of the rules introduced by the regulator based on this problem representation, still impacted energy firms; moreover, the regulator had begun the procedure of moving to a system of regulation that actively avoided setting rules that firms had to keep (Ofgem 2016j).

This contrasts with regulatory policies based on a problem representation of consumer inactivity (12 to 16 in Table 7.2), all 4 of which resulted in changes to the rules that governed the energy supply market. Indeed, the majority of regulatory outputs between 2000 and 2016 were dominated by the introduction of rules that stipulated the information that had to be provided to consumers when entering a contract (Ofgem 2003b, 2009f, 2011g), the information that had to be provided regarding energy usage over time (Ofgem 2009f, 2013k) and communications that encouraged energy consumers to switch supplier (Competition and Markets Authority 2016b, 2016f, 2016d; Ofgem 2009f, 2011a, 2013j).

This problem representation sees the concept of the consumer who needs accurate and timely information, taking a central role in the types of solutions considered by Ofgem. For example, in the Energy Supply Market Probe, Ofgem states the following:

“Consumers should be able to compare products easily;

- *consumers should be confident that when dealing with suppliers, they will be treated fairly and provided with full, clear and accurate information at all stages in the supplier-consumer relationship (before, during and after sales);*

- *consumers should be confident that suppliers will take their circumstances into account and provide information on the most appropriate products for them; and*
- *consumers should not face unreasonable barriers to switching between products or suppliers.”*

(Ofgem 2009f, p. 10)

A significant policy relating to consumer behaviour was the focus of the Retail Markets Reforms, described in Chapter 4, regarding limiting the number of energy tariffs available to consumers. Arguing that the energy market was perceived as too complicated, Ofgem stated that:

“A large number of tariffs, many of which have complex structures and discount arrangements, makes the prospect of engaging in the market unattractive for many consumers, and means it is often difficult for consumers who do engage to choose the best deal for their circumstances.... this limit the ability of consumers to find a good deal and in turn limit the competitive pressure on energy suppliers to offer good customer service at efficient cost and to innovate and improve over time.”

(Ofgem 2012i, p. 15)

This resulted in Ofgem introducing a solution in the form of rules that restricted the number of tariffs available to consumers (Ofgem 2013k).

Interviewees explained that providing information to foster engagement with the market was the predominant focus of the regulator, with one noting:

“So if you look at sort Ofgem’s main communications on retail markets, through all the ups and downs, and to the current day it is always ‘You can be an energy shopper’.”

Ad3 (in line with Reg1, DG2, DG3, Rep1, Rep2, Rep4, Rep5, Ad4, Ad5, Ad6, Ad7, Ad8, Ma4, Ma5)

Interviewees acknowledged the focus on the style, content and timing of information regarding the energy market in regulatory outputs. In line with staff from energy regulators and individuals who had worked at Ofgem in previous roles, one interviewee stated:

“I’m an economist, my team is made up of policy experts and economists and we do whether we like it or not we do tend to think of things in a very rationalistic way. So, [when] we think about a problem, you know, we think about solutions from a very informational deficit model approach.”

RG3 (In line with RG4, RG5, RG7, Ad7, Ad8)

The problem representation that places information-needing purchasers is central to the majority of the regulatory policies on Table 7.2. Of these 17, only 9 resulted in regulatory changes that would be guaranteed by enforceable rules. Crucially, the majority of these regulatory policy outputs were based on a problem representation of consumer inactivity in the energy market, even though the majority of problem representations (4 to 14 in Table 7.2) related to energy supplier behaviour rather than consumer inactivity. Throughout the period, Ofgem maintained its view articulated in 2009 that:

“We remain convinced that consumers benefit most from a vibrant, competitive market: markets work best when consumers make active choices based on good quality information”.

(Ofgem 2009a, p. 4)

Unpacking the implicit problem representations, including the underlying concepts, using the WPR framework reveals the regulator’s assumption that energy supplier behaviour *should* be controlled by active consumers who choose to purchase energy from energy supply firms who behave well.

While all three problem representations - consumer inactivity, energy firm behaviour and regulatory knowledge - are discussed by regulators, the problem representation in policies that resulted in enforceable rules involves blaming consumer behaviour. The role of the regulator is acknowledged and discussed but ultimately only poses a policy problem because of the behaviour of energy consumers. The role of energy suppliers is discussed as challenging but ultimately viewed as an outcome of the behaviour of consumers. Specifically, the behaviour of consumers failed to meet the expectations of the theoretical proposals of a competitive marketplace. Consumers also failed to punish firms who behaved poorly against published indicators of performance by leaving their energy supplier. This means that firms who provided a poor service or failed to comply with regulations were not sufficiently motivated to change. As a result, people could be exploited by suppliers, forcing the intervention of the regulator. In other words, GB consumers failed to play their assigned role, that of engaging with the competitive market to secure their own positive outcomes and drive positive behaviours in the energy firms.

This aligns with findings from GB energy system research, beyond market regulation, that people who use energy in their homes are categorised as consumers and characterised by deficits (Devine-Wright 2012; Lennon et al. 2019; Shove and Walker 2014). In this study, regulatory policy formulation appears to have adopted the characterisation of consumers identified by Devine-Wright as “lacking interest, care, action, time, knowledge or understanding” (Devine-Wright 2005a, p.21). In my analysis, the deficits that characterised the majority of people were with regard to a deficit of interest, care, action, time knowledge or understanding to engage in the energy market.

7.2.3 Silences of energy market regulation in GB 2000 - 2016

The problem representation that focuses on the inactivity of consumers failing to engage in the energy market excludes acknowledgement of, or engagement with, topics related to affordable energy that were the focus of public debate over the same period. Interviewees in this study described three areas as outside of the scope of regulatory policy outputs, despite being central to concerns regarding affordable energy: structural inequality in society; the role of fear in considering engaging with energy suppliers; and death as a consequence of a cold home.

The first issue on which regulatory outputs are largely silent is the structural inequality in society which results in different ability to purchase energy. Low income consumers are particularly identified in concerns regarding vulnerable consumers (Ofgem 2000b, 2005e, 2013c, 2015e). There is a limited acknowledgement of the role of financial exclusion (Ofgem and Energywatch 2003) and digital exclusion (Ofgem 2009i) and their probable impact on vulnerable consumers (Ofgem 2012h, 2013c).

Interviewees from the regulator, third sector and energy supply firms, agreed with the characterisation of economic regulation in the energy market as distinct from concerns regarding inequality in society. Inequality was framed as a problem too large and complex for a regulator to consider, even where affordability challenges were relevant. As one interviewee explained, the focus of economic regulation was on purchasing consumers independent from concerns about the financial context of the decisions of that consumer:

“That actually automatically defines the consuming activity is something rather different from the activity of being a citizen. And I think it is a very useful distinction to make because there are plenty of circumstances where there are

citizen issues which are not directly part of the consumer perspective - like wider issues of social justice and inequality”.

Ad8 (in line with RG1, RG2, RG3, RG4, RG5, RG6, RG8, Re4, Re5, Re7, Ad4, Ma1, Ma2, Ma5)

The factors that might contribute to the lack of income available to people to meet their needs for energy services are excluded from consideration. The role of energy regulatory policy in engaging with this broader context of inequality is simply stated as an issue that should not impact the decisions of economic regulation - only Government policy. For example, in their Social Action strategy of 2005, Ofgem state:

“The broader issues of poverty and social exclusion are essentially for Government. Ofgem’s central role, to protect consumers by promoting competitive energy markets, remains key in helping in helping to keep energy prices as low as possible”.

(Ofgem 2005a, p. 1)

The second issue, which is a silence in the formulation of regulatory policy, is the influence of fear. It is a particularly surprising gap, considering the extensive consideration of Ofgem of the variety of reasons that individuals do not purchase the lowest price product available. Consumers are described in some cases as ‘uncertain’ or ‘concerned’ (Ofgem 2005a, 2009f, 2012i). However, the characterization of people as fearful does not enter the discourse. The role of fear in decisions about energy is described within discussions of the lived experience of people who use energy in their home, described in evidence submitted to the regulator in policy formulation procedures. This includes fear of landlords regarding making changes to suppliers at a rented property, fear of a period without an energy supply, fear of debt or fear of a lack of budgetary control, shape the

experience and decisions related to energy (Ofgem 2005f, 2009d, 2009i, 2013d, 2016g, 2016i). One interviewee from a third sector organisation explained:

“You can’t just bounce [someone] onto a direct debit when you know the idea of the someone just taking money out of your bank account without you explicitly granting [permission] is absolutely terrifying to you”.

Ad9 (In line with Ad3, Ad6)

The third and final silence in regulatory outputs explained by interviewees is any discussion of death. While there was a growing engagement from 2009 with the narrative of energy as an essential service (Ofgem 2009h), the death of those without affordable energy was not part of regulatory policy output between 2000 and 2016. According to interviewees, there were two points at which the death of those unable to afford to heat and light their homes could have been considered.

The first possible point at which engagement from the regulator could have acknowledged death as a consequence of a lack of energy in the home, was in response to the Office of National Statistics publication of Cold Weather Deaths statistics. Coverage from the press and reports from third sector organisations do link energy prices and the behaviour of energy supply firms to Cold Weather Deaths statistics (Akbar 2003; Independent 2015; National Energy Action 2019; National Energy Action and E3G 2018). Regulatory outputs between 2000 and 2016, however, did not.

The second was in response to the “Bates case” where an elderly couple died in a home that had been disconnected due to an energy debt. The result of the case was a significant reduction in the numbers of homes disconnected from their gas supply and a voluntary code of conduct administered by the industry trade body (Energy UK 2016; House of Commons Select Committee on Trade and Industry 2005; Ofgem 2005e). While the public response was significant, the regulator did not conclude

that any new regulation of energy suppliers was required (Ofgem 2005e) . Further, no compliance case was brought against the supplier, who successfully argued that the problem lay with the provisions from social services rather than their procedures (House of Commons Select Committee on Trade and Industry 2005). One interviewee explained that,

“Well, after the Bates family were found frozen to death in their lounge after they’d been disconnected by British Gas there was a short sharp Parliamentary enquiry where they [British Gas], in a most unconcerned way, just explained that they were just doing their job”.

Re1 (In line with Ma3, Ad3)

The role of an economic regulator as set out in statute focuses on the regulation of the energy market. It was argued by both interviewees and articulated in regulatory outputs, that market interactions must be the focus of energy regulation. It might therefore be viewed as unsurprising that inequality, fear and death are topics on which the regulator was largely silent between 2000 and 2016. However, the final example of the Bates case being examined in Parliament explains an alternative place where these issues were discussed with staff from the regulator. In considering “What is the Problem Represented to Be”, I will now move to examine where problem representations were challenged, defended and disseminated. As described in Chapter 2, parliaments and Government departments play an important role in the governance structures of accountable, legitimate regulatory agencies. These structures rely on two sources of challenge to the regulator if elected officials are concerned about the actions of the independent regulatory: accountability to parliament via select committee hearings and legal statutes as defined by Government (Baldwin et al. 2012; Jordana and Levi-Faur 2004; Levi-Faur 2011). However, my findings imply that the operation of this accountability

mechanism may be more complex than the theoretical account, as described in the section below.

7.3 Opportunities for defence or challenge of problem representations

Throughout the period between 2000 and 2016, elected representatives had the ability to hold Ofgem to account through scrutiny at committee enquiry hearings in multiple locations. This included hearings in the devolved nations in enquiries related to fuel poverty (Scottish Fuel Poverty Strategic Working Group 2016; Welsh Environment and Sustainability Committee 2015). However, the energy policy and regulation remained a predominantly reserved power for the UK Government (Mould and Baker 2017; Muinzer 2016). This meant that Select Committees in the Houses of Parliament provided an important venue for regulatory scrutiny and therefore the opportunity to challenge Ofgem's problem representations. In Chapter 4, I identified 11 Select Committees in the UK Parliament that discussed affordability of energy. Five Select Committees specifically investigated elements of the retail energy markets regarding pricing and regulation (House of Commons Select Committee on Business and Enterprise 2008; House of Commons Select Committee on Energy and Climate Change 2011, 2012, 2013; House of Lords Select Committee on Regulators 2007). However, I found no evidence of any Select Committee investigation succeeding in influencing regulatory policy outputs. This might have reflected the formal role of Select Committees in holding regulators to account (Baldwin et al. 2012) and providing an opportunity to challenge the problem representation (Thompson 2016). However, I found no evidence that Select Committees provided a challenge to the problem representation that blamed consumer inactivity for market outcomes. The majority of interviewees articulated doubt that Select Committees had an impact on regulatory policy - the only exceptions being those elected representatives from committees. Indeed, the

theoretical proposal that accountability of Ofgem could be supported or deliverable via scrutiny by Select Committee was seen as highly unlikely by interviewees in this study, with several interviewees actually laughing at the thought that this could be the case. Instead, my interviewees described three features of Select Committees that scrutinised energy market regulation in this period: the orchestrated nature of hearings; that Select Committees provided an opportunity to reiterate the importance of competitive energy markets; and that Committees did not have an impact on regulatory policy formulation.

The first feature of Select Committee hearings was that, according to interviewees, they were highly orchestrated confrontations. Three interviewees described the orchestrated nature of Select Committees in terms of being invited to submit evidence and provide oral evidence. One interviewee described their close working relationship with the House of Commons staff who coordinate appearances - the Committee clerks. One interviewee described invitations to appear as a positive opportunity related to an ongoing relationship:

“So, we have ongoing relationships with clerks of committees. We will probably be in almost weekly contact that committee [through an enquiry], feeding information, and advice. And meetings outside of the committee itself about the agenda. So is it quite a natural procedures I think, in in terms of being invited to give evidence. And as, an organisation, we would expect to [be invited]”.

Ad2

However, two interviewees from two separate energy supply firms did not see invitations from the clerks as positive. One described an occasion on which their firms did not want to appear but were threatened with negative publicity if they did not do so:

“The clerks rang me about the Wednesday before the following Tuesday and said can [CEO] give evidence so we said no, they’re busy. And they said well that’s not good enough reason that they’re busy. And then he rang me back at seven that Friday evening and it was the clerk saying he’s spoken to [the Committee chair] and he wants you to give evidence and if you don’t he’s going to make it public. When I asked why us, he said because you were working with the regulator on this - but all of us [Big 6 energy suppliers] were!”

Ma2

Another interviewee expressed their view that Select Committee evidence sessions were orchestrated by clerks and set up as a confrontation between those giving evidence:

“We were asked to go, we chose not to. There is a little bit of a feeling that if you go, your role, your kind of expected role is to give a counterargument i.e. the big companies and small companies can never agree. And I don’t think that’s necessarily always true but it does put you in a difficult position. There’s just the sort of wariness you can end up getting into a slagging match”.

Ma6

The second feature of Select committees identified in my analysis is the lack of impact of Select Committee report recommendations on regulatory policy outputs. Despite interviewing individuals from organisations and institutions who were regularly engaging with Select Committees on the topic of energy markets and affordability, I did not identify a single Select Committee that impacted a regulatory output. Instead, Select Committee committees supported the regulatory outputs of Ofgem. For example, in 2012, the Energy and Climate Committee included in one report the comment that:

“The snail-like pace of Ofgem’s progress on RMR may have been frustrating, but at least its updated proposals are evidence-based. These issues are far too complex for off-the-cuff policy-making”.

(House of Commons Select Committee on Energy and Climate Change 2012, p. 20)

One interviewee explained that they did not expect a Select Committee to impact regulatory outputs or the actions of the regulator in energy markets:

“If you look back over the years, what kind of scrutiny did the committee really provide? Very little I would suggest. I wouldn’t say they have made much of a difference. I think MPs on that committee have struggled to understand where they can put specific pressure, particularly on the regulator [Ofgem] but also on the government around holding them to account for specific actions in a way that you see with the Treasury’s Select Committee. The Treasury Select Committee is very, very effective in holding the FCA [Financial Conduct Authority] to account. And indeed government ministers to account”.

Ad2 (In line with Re1, Re3, Re4, Re8, Ad3, Ad4, Ad6, Ad7, Ma2, Ma3, Ma5, Ma6)

A third feature of these committees between 2000 and 2016, as described by some interviewees, was that instead of changing or challenging regulatory outputs, they reiterated rather than challenged the commitment to competitive energy markets. The Select Committee system was seen as an opportunity for the regulator to defend its approach and its model of competitive markets with each appearance before MPs, described by one interviewee as:

“...very much around promotion of competition”

Ad3 (In line with Re1, Re2, Re3, Re4, Re8, Ad5, Ad6, Ad7, Ma2, Ma5, Ma6)

The notion of the consumer engaging in the energy market as the focus of policy formulation was rarely challenged in committees between 2000 and 2016. Instead,

scrutiny of the regulator remained focused on its role as an agency to deliver competition.

The focus on regulatory burdens on firms occurred in committees and was reinforced between 2010 and 2016, with a broad focus on all regulators seeking to remove regulation wherever possible. This included rules that the introduction of a new regulation should be accompanied with the removal of another, and that firms should not face unnecessary burdens. As one interviewee explained:

“They [Ofgem and Government] just started from a default ideological default position that they should not interfere in the market”.

Ad8 (in line with Re1, Re2, Re4, Re5, Re7, Ad3, Ad4, Ad5, Ad7, Ma3, Ma6)

The source of the concern regarding the ‘burden’ of regulation was not specifically related to the sectoral focus of energy regulation. This was reiterated by the Select Committee on UK Regulators who stated that:

“We recommend that, as legislative opportunities arise, economic regulators be statutorily required to facilitate the competitiveness of UK firms by: i) promoting competition; and ii) removing regulatory burdens from firms wherever possible”.

(House of Lords Select Committee on Regulators 2007, p. 89)

The overarching narrative that economic growth was driven by privately owned businesses who should be enabled rather than restrained, played a role in consideration of regulation in all sectors. The Government maintained:

“...the Government’s commitment to, stable and predictable regulatory frameworks to facilitate efficient investment and sustainable growth; Independent regulation has been a vital part of the UK’s framework for economic regulation since the 1980s and remains central to the Governments approach.”

(Department of Business, Innovation and Skills 2011, p. 3)

The need to maintain consistency with the overarching framework of regulation in the UK was noted by the majority of interviewees from the regulator, spontaneously explained as part of the description of the scope of Ofgem as an economic regulator.

“So, we follow the better regulation principles in terms of, well in terms of how we go about everything that we do”.

Re3 (In line with Re4, Re5, Re6, Ma1, Ma2, Ma3, Ma5, Ma6)

Better Regulation is an agenda characterised by the restriction and removal of rules that limit the decision making of firms (Hong and You 2018; Levi-Faur 2011; Weatherill 2007). It is cited by Ofgem in terms of the remedies proposed by the Energy Supply Market Probe. In 2005, the CEO of Ofgem described his intention for Better Regulation as:

“In 2005, when Parliament first required us to have regard to the principles of best regulatory practice, I spoke about what better regulation means at Ofgem. I had two key messages: that better regulation is synonymous with competition, self-regulation and the consumer interest: and that at heart it is about mindset not systems. I wanted Ofgem to be an organisation that truly embraced the better regulation agenda, not one that saw it merely as a piece of bureaucracy to be tolerated. The Regulatory Enforcement and Sanctions Act 2008 places a further duty on us in respect of our regulatory functions. This duty requires us to keep those functions under review and to secure that when we exercise those functions we do not impose or maintain burdens which we consider unnecessary.”

(Ofgem 2012g, p. 3)

Select Committees between 2000 and 2016, then, not only provided an opportunity for the regulator to defend energy market structures but reinforced this argument by linking energy regulation to a narrative in which regulators were encouraged to do as little as possible to burden firms with rules (Department of Business, Innovation and Skills 2011; Weatherill 2007).

This analysis therefore identifies that far from challenging the regulator to consider the topics it views as irrelevant to economic regulation and irrelevant - inequality, fear and death - the role of Select Committees in energy market regulation between 2000 and 2016 was to reinforce the view of economic regulation focused on enabling efficient markets. Further, Select Committees reiterated the importance of a low regulatory burden for firms. This is in line with Ofgem's regulatory rulemaking between 2000 and 2016 described in Table 7.2, during which it rarely introduced rules on the basis of a problem representation regarding the behaviour of firm, instead focusing the majority of regulatory rules on providing information to consumers. This reveals that Select Committees were a forum in which the problem representation that blames consumers was disseminated and defended rather than challenged. Further, interviewees reported that Select Committees between 2000 and 2016 did not impact energy market regulation in that period.

7.4 Chapter Conclusion

In this chapter, I have explained my findings from applying the "What is the Problem Represented to Be?" framework to energy market regulation between 2000 and 2016. I identified that people who use energy in their homes were visible in regulatory outputs with reference to 5 concepts, but that the concept overwhelmingly present in this period was that of the purchasing consumer. This is unsurprising given the context of research, namely, the UK energy system and the

role of domestic householders as purchasers and the findings of previous research (Devine-Wright 2012; Scrase and Ockwell 2009; Shove and Walker 2014). What is revealed for the first time by this thesis is the extent to which regulatory output that resulted in the rules that changed the operation of the energy market, responded to the characterisation of consumers - how the consumers are known - while failing to respond to issues that adopted an alternative problem representation. Using the WPR approach to trace the solutions provided to respond to problems, I have shown that there are few examples where regulatory outputs introduced new rules based on the behaviour of energy supply firms being an implicit or explicit problem. Instead, the majority of changes in energy market regulation between 2000 and 2016 were in response to the problem of consumers failing to engage in the market and switch supplier. The problem representation of inactive consumers within the procedures of energy market regulation results in silences - issues that are rarely considered and when present, firmly rejected as irrelevant. These include the impact of inequality in society on the ability to purchase energy and fear and death as a consequence of a lack of energy services in the home. The inclusion of these silences within the WPR framework provides a central insight into the gap between public expectations and regulatory policy-making described in Chapter 1. Much of the narrative of concern articulated in the press at the time (Independent 2015; National Energy Action 2019; National Energy Action and E3G 2018) related to the affordability of energy, to inequality and death as a consequence of a lack of energy services in the home. Yet as my findings show, these were not accepted as relevant in regulatory policy formulation between 2000 and 2016.

Although the majority of changes to energy market regulation between 2000 and 2016 was based on a problem representation of consumer inactivity, this representation was challenged on two occasions within the regulator: first, in the

Retail Market Review (Ofgem 2010f, 2013j) and then in the Vulnerability Strategy (Ofgem 2012h, 2013c). Each of these occasions saw the introduction of a new concept of people who use energy in their homes and called for a significant and enduring change to the operation of the energy market. However, neither successfully challenged the problem representation of consumer inactivity being due to lack of information.

In Chapter 2, I explained that regulators were theoretically accountable to parliament. It might, therefore, have been expected that parliamentarians would have challenged the silences at Ofgem regarding harm related to unaffordable energy and would have held Ofgem accountable for restricting the majority of new rules to ones that were based on blaming consumers for the failures of the energy market. However, evidence provided by my analysis of problem representation provides a more complex scenario, one where committees provided an opportunity for the reinforcement of the problem representations within economic regulation. The findings of 'What is the Problem Represented to Be' proposes that a straightforward account of accountability of regulators to select committees may be over simplistic.

The result of this problem representation being predominantly adopted between 2000 and 2016 and being defended and disseminated across multiple institutions and organisations, is based on concepts of consumers that are technocratic and economic, focused on market interactions. Within this problem representation, consumers are expected to be active participants. Where they fail to engage in the manner predicted, regulatory policy focuses on changing their behaviour to match regulatory expectations, with only those who do behave in this manner securing benefits from the energy market.

The analysis presented in this chapter makes an important contribution to answering the research question: “What role did knowledges of ‘consumers’ play in the formulation of GB energy market regulation between 2000 and 2016?”. It shows that the concept of ‘consumer’ shaped regulatory outputs; in turn, its impact on the energy market was to limit people who use energy in their homes to that of purchasing consumers who were in need of information. However, the WPR approach alone does not explain *how* this problem representation played a role in the formulation of the energy market. Having established a clear view of the way consumers were known in regulatory outputs and new insight into the accountability mechanism of parliamentary scrutiny by Select Committees, I therefore analysed how the tasks that made up the procedures leading up to regulatory outputs - policy formulation - functioned between 2000 and 2016. This analysis is discussed in the next chapter.

Chapter 8 - Discussion

8.1 Overview of Findings

In this chapter, I discuss the implications of the combined insights from all of the analysis presented in this thesis for understanding the role that knowledges of “consumers” played in the formulation of GB energy market regulation between 2000 and 2016. Firstly, Chapter 4 described the regulatory policy events and their context between 2000 and 2016. This provided the insight that there was a great deal of regulatory policy activity between 2000 and 2016, particularly from 2009. The time period 2009 to 2016 saw important new ways of knowing of ‘consumers’ visible in the policy documents considered: behavioural consumers who might be considered irrational (Ofgem 2012i) and a new definition of consumers in vulnerable circumstances (Ofgem 2013c). Further, the needs of consumers to be able to secure affordable energy gained prominence politically, with significant changes to the statutory duties of the regulator (Deller et al. 2018).

In Chapter 5, using the Energy Justice Framework (EJF) (Jenkins et al. 2016; McCauley et al. 2013) my findings identified the large number of opportunities provided by energy regulation procedures to include diverse knowledges that could deliver energy justice. This included diverse groups of representatives providing detailed and nuanced evidence regarding the differentiated energy needs, within procedures that were open to all. The procedures of energy market regulation between 2000 and 2016 at Ofgem therefore included key features of recognition and procedural justice. However, the regulatory outputs rarely reflected this diversity of and nuanced knowledges within the regulatory procedures. Instead, the majority of regulatory outputs maintained a single way of knowing people who use energy in their homes, as energy consumers who needed information. Chapter 5

explained that the outcome of these regulatory policies was distributionally unjust, with those who had higher needs for affordable energy least likely to secure benefits from the market structure. Importantly, the analysis in Chapter 5 did not, however, reveal *how* or *why* the interacting features of distributional, procedural and recognition injustice occurred. What it did reveal was that different ways of understanding consumers were related to inequalities of outcomes. Specifically, my analysis identified that the lived experience of energy consumers as represented in policy procedures by third sector organisations, was not the same as the insights regarding customers that the energy firms provided.

I therefore went on to apply two frameworks from policy studies: Tools of Policy Formulation (TPF) (Jordan and Turnpenny 2015) and “What is the Problem Represented to Be?” (WPR) (Bacchi 2009b) frameworks. The findings in Chapter 6, generated through applying the “Tools of Policy Formulation” framework, explain *how* a technocratic, economic way of knowing maintained an influence in the regulatory outputs. Chapter 7 showed the benefit of a focus on policy *formulation* to investigate energy market regulation between 2000 and 2016. While considering procedures and policy-making in the broader sense provides insight into the input and output of regulatory policy making, the focus on specific formulation tasks undertaken at Ofgem using specific tools explains *how* actions taken by staff were repeatedly in line with the expectations of economic regulation and focused on market logics. Each framework from policy studies reinforced findings that resulted from my analysis and identified the effects of particular knowledges within policy procedures and in terms of regulatory outcomes, as I go on to describe below.

Policy formulation actors at Ofgem evaluated problems and assessed options in terms of problems characterized by the expectations of market interactions.

Although the tools that were used within the regulator provided a large number of opportunities to input into policy formulation tasks, the role different knowledges

played was limited. Further, tools used within regulators provided opportunities to extend the ways in which consumers were 'known' by the actors of regulatory policy formulation. However, not all of these tools were equally influential in terms of regulatory outputs. Instead, the stakeholder consultation tool brought together the indicators, research reports that resulted from the deliberative focus groups and the views of consultees to evaluate problems and assess options. The influence of the stakeholder consultation tool could have been a significant contributor towards regulatory legitimacy at Ofgem. This is because it was a procedure open to all and the inputs were almost universally transparent. However, according to my interviewees, access to stakeholder consultations were not equal across the different organisations. Instead, a technocratic discussion of market operations set a higher barrier for many participants and resulted in inequalities, perceived by interviewees as an inequality between energy supply firms and any other organisations engaging with Ofgem. Interviewees from energy supply firms broadly accepted this characterisation and pointed out that a further inequality existed between smaller energy supply firms and ex- monopoly suppliers, who were perceived as having engaged regularly with the regulator over a significant period of time. This resulted in a perception that ex-monopoly energy supply firms were seen as credible, reliable evidence providers, whose knowledge of energy consumers as purchasers of their products was seen as most influential in formulating regulatory policy outputs.

The finding of Chapter 7 suggests that the provision of opportunities to engage with regulatory policy making was insufficient to influence the way that 'consumers' were known within Ofgem between 2000 and 2016. In Chapter 7, the "What is the Problem Represented to Be" (Bacchi 2009a) framework helps to explain *why* opportunities alone did not change the characterisation of consumers to a sufficiently significant extent to result in influencing regulatory outputs. Rather

than adapting or developing regulatory outputs to respond to an increasingly nuanced and diverse range of ways of knowing people who use energy in their homes, and these being made visible within regulatory policy procedures, consumers continued to be characterised as information-requiring purchasers. This finding proposes that rather than the diverse range of knowledges present in regulatory policy procedures playing an equal role, a single powerful technocratic, economic discourse based on market logics which knows consumers as information-poor purchasers, was maintained over the period 2000 to 2016. This had influential effects on the characteristics of regulatory procedures and regulatory policy outputs.

Reviewing all of my findings under each framework together raises two notable characteristics of energy market regulation between 2000 and 2016: inequality generated by regulatory processes that maintained a focus on retail market development and inequitable access to regulatory procedures that benefitted the access of ex-monopoly energy supply firms. I elaborate on each of these in the sections below.

8.1.1 Effects of regulatory procedures

The first overarching set of findings of my thesis relate to the effects of an economic discourse of retail market development on the functioning of regulatory procedures. My findings have demonstrated that regulatory activities between 2000 and 2016 systematically prioritised retail market development. This had two overarching effects on regulatory policy in energy during this period. First, policy formulation maintained a focus on retail market development throughout the period. This saw policy formulation tasks focused on the evaluation, assessment and design of policies focused on market operations. Second, the transparency of processes open to all did not result in a broadening of ways of knowing that

incorporated diverse perspectives. Each of these effects constrained ways of knowing in procedures of energy regulation.

The first effect of regulatory procedures within the market discourse was a hesitancy to introduce rules that would impact the operation of the energy market. This was due to policy procedures that maintained a focus on market development. This affected the breadth of tasks of policy formulation undertaken between 2000 and 2016. Evaluation, assessment and design occurred within the market discourse and failed to incorporate a nuanced understanding of differentiated energy needs. There were two exceptions to this pattern. The first exception was the objective set in the 2001 decision to implement full retail market competition in GB. Policy formulation at Ofgem therefore maintained its objectives as set out in 2001 that:

“Ofgem believes that, consistent with the new principal objective under the Utilities Act 2000, consumers’ interests, in terms of price, quality and variety of service on offer, will, wherever appropriate, be most effectively protected through effective competition between suppliers.”

(Ofgem 2001b p. 5)

While this adopted a problem representation of energy firm behaviour and introduced rules that impacted the operation of the energy market, it did not engage with an acknowledgement of diverse energy needs associated with recognition justice. Instead, as outlined in Chapter 4, it focused on a market design whereby consumers were expected to engage in the market.

The second exception were two regulatory outputs regarding vulnerable energy consumers. Aligning this with an understanding of individual tasks of policy formulation reveals an important characteristic of this regulatory procedure: it involved problem characterisation. Problem characterisation provided the

opportunity for actors within the regulator to open up the understanding of causes and impacts of the experiences related to vulnerability of consumers in the energy market (Ofgem 2012f, 2013c) and resulted in a novel manner of understanding consumers in vulnerable circumstances. However, in terms of incorporating new ways of knowing consumers in the regulatory output governing the energy market, the WPR framework illustrates the limited effect of this problem characterisation. Specifically, it did not result in a rule that would have affected the operation of the energy market.

Even where there was an acceptance that energy supply firms needed to change their behaviour, there was a hesitancy to introduce rules that might impact competitive markets and limit innovation. Indeed, on two occasions, rules were removed on the basis that they had an adverse effect on competition (Ofgem 2010c, 2016a). While options to introduce rules were regularly considered by the regulator, the introduction of rules to constrain the behaviour of firms rarely went beyond instructions to provide information. This approach is characterised by the following quote from Ofgem in 2009 (with similar wording regularly coming up throughout the corpus) that, when introducing a new rule through a supply licence condition:

“We would need to be sure that such a condition is a proportionate measure and serves to help, rather than hinder, progress towards an effective competitive market.”

(Ofgem 2009e, p. 3)

The focus on innovation is also visible in the broader economic context during this period, for example, the emphasis on shareholder value maximisation. My WPR analysis identified that between 2000 and 2016, this included a narrative of the need to enable firms to make decisions and act in the way that they saw as most

efficient. Under the banner of “cutting red tape”, Government ministers encouraged regulatory institutions to remove rather than increase the “burden” of regulation on firms. Although the period of 2000 to 2016 saw significant individual Government policies calling for specific regulatory interventions in the energy market (Energy Act 2010, 2011, 2013), these did not result in the energy market being exempt from policies that sought to remove regulatory barriers from firms. This context makes it less surprising that Ofgem did not consistently implement rules.

The consequences of this approach are visible in terms of distributive justice outcomes. In Chapter 5, I identified a series of opportunities for Ofgem to reform the market so as to secure positive outcomes for all consumers, particularly consumers in vulnerable circumstances. However, the nuanced understanding of energy needs present when assessing options within procedures, rarely translated into a regulatory output that had a consistent effect on the operation of the energy market. This is because, instead of implementing rules that might have had a positive distributive outcome, Ofgem maintained a focus on provision of information to support engagement in the market and failed to introduce regulatory policies to deliver distributive justice.

The second effect of the market discourse I identified was the failure of making procedures that were inclusive to all and the consequences of this. The inclusiveness of processes did not result in a broader range of ways of knowing that incorporated diverse perspectives. Instead, my analysis reveals that regulated firms operated within the market discourse of economic regulation and therefore, their views were institutionally embedded in a manner that other views were not. This undermined procedures that had been implemented with the intention of bringing diverse views into decision-making processes. For example, deliberative focus group

reports noted challenges in engaging with members of the public with regards to support for vulnerable consumers, with one report stating:

“They [focus group participants] find it difficult to get beyond the view that any extra costs should come from suppliers’ profits”.

(Ofgem 2014c) p. 29

This illustrates the limited ability of focus group participants to challenge the scope as set out by Ofgem within the focus groups by articulating the expectation that participants “get beyond” their opinion that support for vulnerable consumers should be funded by profit making firms rather than consumers.

Participatory tools of policy formulation were incorporated as a central part of the procedures of regulatory activities. However, the restricted focus on retail market engagement meant that views that did not relate to the interaction of competing firms and their customers were rarely incorporated. This meant that although there was a range of opportunities to engage with the regulator, they were not equitably available to all. It was therefore unsurprising that discussions related to fair outcomes within procedures were systematically excluded from regulatory policy outputs. Opportunities to engage with regulatory procedures were, however, reported by interviewees to be accessible to energy supply firms. This had implications for the role of energy firms in regulatory policy formulation, as I go on to explain in the section below.

8.1.2 Inequality of access to regulatory policy procedures

Energy firms were seen by interviewees as having more resources than others participating in the procedures of policy formulation. For example, they had specific teams of regulatory specialists to engage with Ofgem. While energy firm

interviewees mainly described a need to prioritise the focus of the team in line with different regulatory policies (with one exception), third sector organisations described their situation as either being able to engage or not. This observation reported by interviewees may not be surprising. However, my findings identified three characteristics of regulatory policy-making procedures between 2000 and 2016 that increased the inequitable access of energy supply firms to regulatory policy formulation: their market expertise, their access to an additional policy formulation venue and the complexity of procedure of affordable energy policy-making.

First, energy firms had acknowledged and valued expertise in the operation of the energy market and the experiences of consumers within that market. Insight from the energy supply firms was required by the regulator and formed the basis of the majority of operational considerations in the energy market between 2000 and 2016. In Chapter 5, the interaction of inequalities and injustices for recognition in participatory procedures was described through the Energy Justice framework (Schlosberg 2009; Walker and Day 2012). These findings revealed that injustices of recognition and procedures resulted in inequitable respect for experts. Where expertise was associated with knowledge about customer activity, this placed respected experts largely within regulated firms. Some energy supply firms described this insight provision as a resource burden on their operations. However, my TPF analysis identified that the role of regular engagement with regards to insight into the market from energy supply firms, provided far more opportunities to them than to other organisations engaged in regulatory policy formulation.

This respect for expertise enabled the second characteristic of regulatory policy-making procedures that benefited energy supply firms: the informal venue of the industry body. Between 2000 and 2016, Ofgem concluded that their policy would be to support voluntary codes of conduct within the industry, rather than introduce

rules. As outlined in Chapter 4, this included voluntary codes regarding the high-profile issues relating to energy supply firms, namely, doorstep selling and the disconnection of vulnerable consumers. These voluntary codes were drawn up by the trade association for energy supply firms. These voluntary codes may have had an impact in the way in which energy supply firms operated. However, these were not universally adopted by energy supply firms and therefore did not impact the operation of the energy market to secure benefits for all consumers. Further, it is notable that rules were introduced to replace voluntary codes and were highlighted as a concern of the CMA Energy Market Investigation (Competition and Markets Authority 2016b). Further, due to the fact that the development of these voluntary codes were conducted without the transparency of public policy-making and without processes open to all, it failed to meet the standards set by procedural justice.

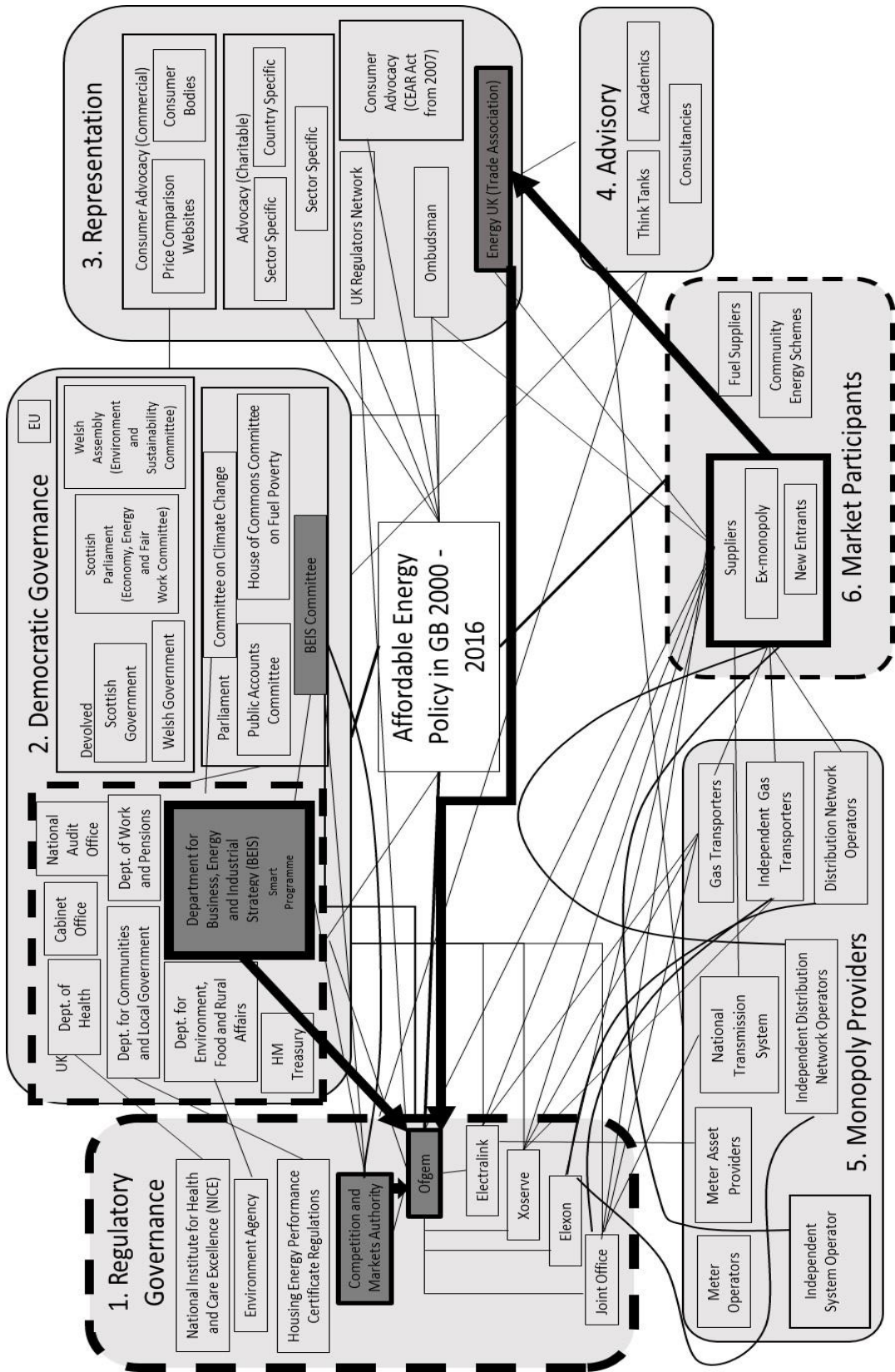
The third and final characteristic I identified as benefiting energy supply firms was the complexity of the interacting spaces of affordable energy policy. The focus of the research question posed in this thesis is the energy regulator, Ofgem. My thesis was scoped in this way in response to the academic research that preceded this literature and the statutory arrangements of GB. This is reflected in the results of my procedures tracing, presented in Chapter 4. However, engaging with interviewees - particularly those interviewees working at the detailed level of policy formulation - revealed a far more complex policy system.

The narratives of my interviewees, reinforced by commentary in documents, describe a complex system that extended far beyond Government, Parliament and the energy regulator. The system as described by interviewees incorporated discussions related to energy prices and therefore, energy affordability, that were perceived to be significantly influenced by Ofgem and the way that it used its powers. This included the distribution of the Warm Home Discount benefits and the

interactions with devolved administrations described in Chapter 5 and alternative venues of policy formulation as described in Chapter 6. The narrative of interviewees when mapped in this way reveals a further barrier to engagement in policy procedures that relate to affordable energy: their extensive scope and range. Knowledge of the opportunities available and resources to participate in these opportunities, provided a further benefit to the comparatively well-resourced energy supply firms. In regulatory policy formulation, the implication for capture is that regulated firms had more opportunities to influence the regulator than other participants.

In Figure 8.1 I mapped this set of interactions between actors and venues that influenced regulatory policy formulation regarding affordable energy (Miles et al. 2014).

Figure 8.1 System of Affordable Energy Policy Formulation 2000 - 2016
 Published changes in the name of an organization changed between 2000 and 2016 are listed in Table A8.



The narrative of interviewees resulted in my identification of the six spaces in the policy system indicated by six boxes. Each of the six spaces refer to clusters of organisations and actors described by the interviewees as participating in topics associated with energy market regulation - energy markets, energy affordability and fuel poverty. Where a subgroup existed, it is indicated by a box with a light grey line. The groups that interacted are indicated by the grey lines. The thick black lines refer to findings from my analysis overlaid onto the system that resulted from descriptions given to me by the interviewees.

In Box 1 are institutions of regulatory governance. Only the energy regulator, Ofgem, has specific powers regarding energy markets (Utilities Act 2000; Energy Act 2004, 2008, 2010 and 2013). Also required, via Government guidance, was that it consider the impact of fuel poverty in its decisions (Ofgem 2000b, 2005e, 2013c). Ofgem also had sole responsibility for monitoring compliance of some social schemes related to fuel poverty (Ofgem 2013c, 2015e). In addition to energy regulation, interviewees pointed to the connection between regulatory policy and health concerns, housing and the environment. Further, an investigation into competition in the energy market by the Competition and Markets Authority provided opportunities for engaging in discussions regarding the costs associated with energy pricing. Finally, regulatory governance included the detailed industry codes and agreements that had decision making powers regarding the distribution of costs between areas of the energy system.

Regulatory Governance was, unsurprisingly, the focus of much of the interviewees' narrative about regulatory policy formulation. Less predictable was the role of other types of regulatory governance that were perceived by interviewees as having an impact on the affordability of energy. The health and housing concerns connected to fuel poverty resulted in interviewees from third sector organisations engaging with procedures regarding the provision of energy-related services by

healthcare professionals and via housing regulation. In addition to the narratives of interviewees, these regulatory spaces were also visible in documentation regarding affordable energy in Scottish and Welsh fuel poverty policy documents (Scottish Fuel Poverty Strategic Working Group 2016; Welsh Government 2015). Further, the technical operation of the energy system, industry codes and agreements, were described as playing a further role in energy affordability and energy pricing, in that their role involved allocating costs to different parts of the energy system. These procedures were described by interviewees in third sector organisations as particularly difficult to engage with due to the technical nature of discussions and the reliance on energy supply firms to provide the technical expertise to facilitate discussions.

Box 2 lists the institutions of democratic governance. Elected representatives of parliaments scrutinise legislation via committees and debates in the UK and in devolved parliaments and assemblies. Democratic Governance therefore includes multiple parliaments and committees. This included multiple policy formulation procedures with related but differing priorities. As discussed in Chapter 7, committees might have had a role in challenging the problem representation embedded within Ofgem and deliver an increased focus on public concerns regarding affordability and fairness. However, interviewees highlighted that this did not occur. Within devolved administrations, regulation was not within the powers required to impact energy prices. Select Committees within the UK Parliament did include a consideration of fairness and affordability but these failed to challenge the problem representation within energy market regulation.

In Box 3 are the representative groups who engaged with energy policy development. Each organisation within this space related their role in policy making as a formal position representing a particular group. For example, this included the consumer representative, the industry body that represented energy supply firms

and the UK Regulators as representatives of economic regulators in the UK. Interviewees referred to commercial consumer groups who provided advice or services on engaging in the market, charities representing particular demographic groups and the statutory consumer advocate as well-known representatives in policy making procedures in energy and beyond. Interviewees also consistently described the role of the industry body that represented some energy supply firms. Energy UK and its predecessor organisations who represented the energy supply firms who made up its membership. Energy UK Codes of Practice were noted by interviewees as the source of standards and rules on topics where the regulator, Ofgem, did not change the prescriptive rules in the energy supply licences (Ofgem 2003c). As discussed in Chapter 7, this resulted in policy formulation activities occurring within the industry body that represented the energy supply firms. These organisations represented specific groups that might relate to any of the areas and issues identified across the policy space. Representatives were described by interviewees as having had a far less formal role in providing expertise to policy development procedures, compared to the organisations and institutions in Box 1 and Box 2

In Box 4 is the advisory group who provided expertise but had no formal role in contributing to energy policy development. They provided ad hoc input to procedures of energy policy formulation and included academics, consultancies and think tanks. Those in the advisory group can be seen engaging with policy formulation in documentary evidence such as consultation responses and parliamentary committee reports. Interviewees noted that the perception of organisations associated with the advisory group varied significantly and the reliability and credibility of their contribution was connected to these perceptions. For example, my connections to the Centre for Competition Policy and UK Energy Research Centre were noted by the majority of interviewees, who showed

familiarity with the evidence provided by both research centres to debates regarding energy markets and energy affordability, respectively.

In Box 5 are the monopoly providers. These organisations were associated with the transportation of energy around the system. Interviewees explained their role in regulatory policy formulation regarding affordable energy in terms of identifying and supporting vulnerable consumers. Transportation of gas was linked in regulatory policymaking to fuel poverty through a specific scheme to extend the gas grid to new areas (and therefore deliver a heating fuel associated with lower prices). In addition, the period 2000 to 2016 has been associated with an increase in engagement from local district network operators (DNOs). This is due to the developing needs that were associated with identifying households in fuel poverty. Network operators had responsibilities to identify individuals with particular energy-related needs through the 'Priority Service Register' and the use of this data, alongside measures of low income, became the focus of development for further targeting. However, monopoly providers of energy transportation played no role in retail market regulation between 2000 and 2016.

In Box 6 are the market participants, predominantly energy supply firms who played two roles in policy procedures. Interviewees from third sector organisations described their perception that enduring relationships and regular contact between ex-monopoly energy supply firms and energy policy formulators within the regulator, created an additional barrier for any organisation that was not a large energy supplier. The view was that larger energy supply firms had lower barriers to engaging with the regulator and, to some extent Government, a view also held by smaller energy supply firms. The firms were perceived by interviewees as the only actors sufficiently resourced to navigate the complex interactions of affordable energy policies.

Mapping the location of organisations and institutions where tools were used to produce regulatory policy outputs, also provided important insight into the different levels of influence that policy actors had. Those with influence on regulatory policy outputs are those who had opportunities to engage with the organisations in the boxes with a black dashed line in Figure 8.1. The policy actor using tools of policy formulation between 2000 and 2016 had an important influence in setting out the options to be evaluated and assessed. Revealing the more limited range of opportunities to impact regulatory policy outputs helps to identify policy actors that engaged with? the most influential tools, within the most influential venues.

Venues where these tasks took place were not universally accessible to all. While the energy regulator and Government departments provided guidance that recommended transparent policy formulation procedures that were visible to all, this was not the case for all of the opportunities for policy formulation. In addition to Ofgem, these included the Department of Business, Enterprise and Industrial Strategy, the Competition and Markets Authority and the trade association for energy firms Energy UK (identified by the dark grey boxes in Figure 8.1).

Highlighting the venues within which regulatory policy formulation was conducted between 2000 and 2016, sheds light on the influence of different ways of knowing energy consumers that impacted regulatory outputs, with the understanding that specific tasks occurred with the input of specific policy actors due to the use of tools.

My analysis in Chapter 7 using the WPR framework, identified that not all actors and venues of policy formulation engaged in policy formulation on an equal basis. The dark grey boxes comprise institutions and organisations that had defended and disseminated the problem representation of consumer inactivity in a competitive energy market. These institutions and organisations maintained a status quo in

which businesses, including energy supply firms, were conceptualised as sources of beneficial economic growth and energy consumers were characterised as failing to engage in the energy market. These were the Competition and Markets Authority, Ofgem and the Government departments with responsibility for energy regulation and its associated Select Committee. If a successful reproblematisation of affordable energy in the home in GB were to take place, it is likely that these four institutions would need to adopt a different characterisation of consumers. The findings of this thesis suggest that even if Ofgem adopts a different problem representation which incorporates diverse knowledges, regulatory outcomes are unlikely to similarly change while the technocratic, economic discourses are maintained in venues that impact energy market regulation.

This system of six types of policy formulating expertise provides a rich and nuanced range of perspectives that could have been drawn upon in the formulation of regulatory policy formulation. Each of the six spaces has been identified as providing its own important contribution to the context in which policy was formulated. The diversity of perspectives across this system provided an opportunity for a range of perspectives on affordable energy that could have supported inclusive policy formulation prioritised by energy justice scholarship and models of regulatory legitimacy. However, the analysis in this thesis suggests that the opportunities in this system did not result in inclusive regulatory policy formulation procedures between 2000 and 2016.

Mapping the Regulatory Policy System in Figure 8.1 reveals how, within the connected policy arena of fuel poverty amelioration, an inequality in participation, reinforced by inequitable recognition between experts in energy policy procedures connected to energy market regulation extended into debates regarding policies regarding energy service affordability. This regulatory governance extended beyond the energy market into health and housing and democratic governance to devolved

administrations. This complex system of interacting organisations and venues was described by interviewees as requiring significant resources to identify opportunities to engage and then to do so. Further, interviewees noted that only ex-monopoly energy supply firms had the resources to take up such opportunities from across the system.

8.1.3 Summary of Findings

Between 2000 and 2016, ‘consumer’ knowledges played a role in energy market regulation predominantly when characterised as information-poor purchasers. This is due to a technocratic, economic discourse embedded within energy regulation and in procedures that were used by regulators. There were challenges made to the characterisation of ‘consumers’ as information-poor purchasers. These included an increasingly nuanced and detailed engagement with characteristics that could result in vulnerability and increased energy needs. There were a large number of opportunities to present evidence to knowledges of ‘consumers’ beyond a characterisation as energy purchasers. However, the technocratic, economic discourse maintained its influence. Instead of diverse knowledges of ‘consumers’ influencing regulatory policies, only the concept of ‘consumer as information-poor purchaser’ played a consistent role in energy market regulation between 2000 and 2016.

Synthesizing the findings of each chapter in this section shows in seeking to understand the role knowledges of consumers played in energy market regulation between 2000 and 2016, each analytic framework revealed important features of regulatory procedures. First, the EJP analysis revealed the inequitable participation between different organisations engaged in policy procedures and missed opportunities to correct distributional injustices. Second, TPF provided the insight

that in the operation of policy formulation, there were inequalities in respected expertise. Understanding the activities of energy market regulation as a series of policy formulation tasks undertaken by actors in venues using certain tools, provided insight into how inequitable policy procedures operated. These procedures embedded the way of knowing consumers that were present when energy markets were introduced in the 1980's, despite contemporary ways of knowing people who use energy in their homes and new legal powers for Ofgem. Third, WPR identified the connection between energy market regulation and rules that predominantly relied on a problem representation that blamed consumers for failing to act in the manner expected of information-poor purchasers. Finally, the combination of the insights from each chapter reinforce one another in generating the two overarching insights: the effects of a focus on retail market development and the inequitable access to regulatory procedures by ex-monopoly energy supply firms.

My findings suggest that there were three significant omissions from regulatory procedures that are necessary for those concerned with either energy justice or regulatory legitimacy. First, there was little transparency regarding the limited nature of the tasks being undertaken within the regulator and these rarely included the problem characterisation that might have incorporated broader concerns regarding fairness or affordability of energy. Second, there was a systematic rejection of the need for rules that would affect the activities of all firms, beyond information provision. Third, there was an inequality of respect between experts who were able to engage in technocratic discussions regarding market operations and those who were not. In the subsequent sections, I discuss the way that these findings contribute to the academic literature.

8.2 Novel contribution to research

In this section, I describe my three contributions to academic research. First, I describe the implications of my findings for research relating to energy justice. This

includes a new case study of policy development within energy institutions as well as a rare focus on regulatory procedures. Further, I propose an adaptation to the understanding of interacting forms of injustice that incorporates an understanding of institutional expectations with regards to expertise. Second, I explain how important insights into injustice can be revealed by adopting two analytic frameworks from policy studies (Bacchi 2009b; Jordan and Turnpenny 2015). Finally, I describe the implications of my findings for regulatory legitimacy in GB, including a proposed development of the classic understanding of regulatory capture and incorporating a deeper understanding of expertise into Regulatory Studies.

8.2.1 Energy Injustice in GB energy market regulation, 2000 to 2016

The empirical analysis in this thesis identified a problem representation in policy formulation regarding affordable energy that focuses on energy market participation. This has important implications for the just-ness of policy outcomes in that the existing discourse poses a barrier for the equitable recognition of and participation by, diverse policy formulators. In the sections above, I explained that there are significant limitations in previous research in terms of understanding the scale and extent of the effects of market discourse within regulatory procedures. This is evident in my documentary evidence and explained by interviewees. Revealing energy injustice included directly engaging with the way that the most influential way of knowing consumers - as information-poor purchasers - could be empirically identified as functioning in policy procedures. Understanding the extent to which energy injustice functions, therefore, needs to begin by

acknowledging the complex interactions of institutions and organisations in formulating policies for affordable energy in the home.

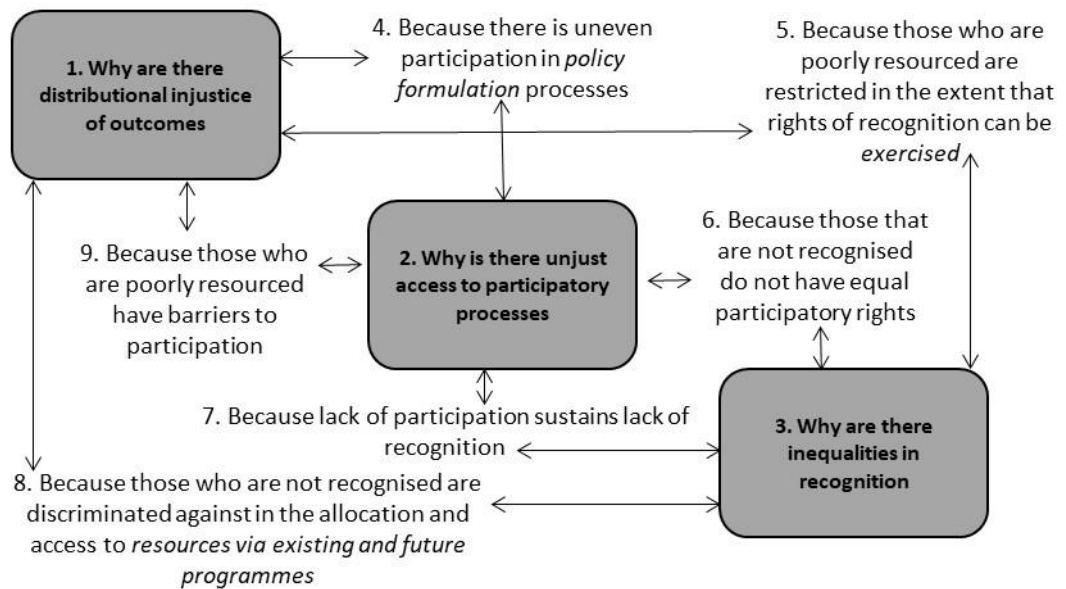
My analysis contributes to identifying two shortcomings of previous studies regarding energy justice in GB that excluded regulation and the adopted the narrow policy frame of 'fuel poverty'. My empirical findings from the WPR and TPF frameworks describe why this shortcoming is so significant to the interaction of injustice. Existing assumptions embedded within the technocratic economic discourse focus on market interactions and consumers with information deficits. It is the implicit assumptions associated with the market discourse that are powerful within policy formulation procedures.

The enduring role of the technocratic economic discourse resulted in a specific group of experts being respected over others. What is revealed by the analysis of regulatory policy formulation is that this group is distinct not only due to their expertise being relevant within the market discourse of the regulator but also that they have had the opportunity to build a relationship over time and that they provide data that is required by the regulator to monitor the energy market.

Previous research has not identified the effects of the market discourse in limiting the extent to which energy justice can occur. This is because the application of the framework as conceptualised in previous research did not move sufficiently beyond the role of *opportunities* to participate in energy policy development. The research in this thesis, on the other hand, incorporated the WPR and TPF frameworks to reveal the impact of institutionally embedded implicit assumptions that have been unidentified in applications of the Energy Justice framework in isolation.

Figure 8.2 Energy Injustice Interaction

This figure explains the interaction between distributional, procedural and recognition injustice revealed by the findings of this thesis, adapting Schlosberg (2009), as described in Table 8.1 below.



The extent to which this restriction in participation affects injustice can be seen by revisiting the interaction of injustice as described by Schlosberg (2009) in cases of Environmental Injustice and discussed in Chapter 2 of this thesis. My analysis using the EIJ in Chapter 5 explained that a similar interaction could be observed with poorly resourced participants who faced barriers, leading to inequitable participation (box 9 and box 4 in Figure 8.2). This reinforced the inequitable distribution of resources (box 8). Exposing the problem representations embedded within these processes and revealing how policy procedures of energy market regulation functioned, extends the understanding of injustice further. The way in which the findings of this thesis provide evidence for a similar interaction of injustice are described in Table 8.1 below.

Explanations of energy injustice and their interaction share several characteristics with environmental injustice as originally proposed by Schlosberg (2009), with four differences. Differences between the interactions of environmental injustice and proposed adaptation based on my empirical findings, are explained in italics in Figure 8.2 and described in Table 8.1.

Table 8.1 Why is there injustice in energy market regulation?

Why is there injustice?	Environmental Injustice Schlosberg (2009)	Energy Injustice (Blakelock)	Empirical Findings (Blakelock)
Why is there unjust access to participatory procedures?	Because lack of participation sustains lack of recognition.	Because lack of participation sustains lack of recognition.	Finding 1. Participation in regulatory policy formulation has few consistent participant organisations beyond energy firms and the statutory consumer advocate.
	Because those who are not recognised do not have equal participatory rights.	Because those who are not recognised do not have equal participatory rights.	Finding 2. Those who do not have credible economic expertise do not have the opportunity to become respected participants due to the maintenance of the embedded frame.
Why are there inequalities of recognition?	Because those who are poorly resourced face barriers to participation.	Because those who are poorly resourced face barriers to participation.	Finding 3. Barrier to participation in terms of not being a respected participant in economic frame and few resources to overcome the barriers of engaging in regulatory policy formulation.
Table continued on page 265			

<p>Table continued from page 264</p> <p>Why are there inequalities of recognition?</p>	<p>Because those who are not recognised are discriminated against in allocation of and access to resources.</p>	<p>Because those who are not recognised are discriminated against in allocation of and access to resources <i>via existing and future programmes.</i></p>	<p>Finding 4. Development of programmes distributing resources over time places expertise of programme delivery firmly within the energy market. Development of programmes is iterative and relies on this expertise.</p>
<p>Why is there distributional injustice?</p>	<p>Because those who are poorly resourced have restricted access to rights of recognition.</p>	<p>Because those who are poorly resourced are restricted in the extent that rights of recognition can be <i>exercised.</i></p>	<p>Finding 5. Access to resources constrains ability of representatives to exercise rights of recognition in policy formulation.</p>
	<p>Because there is uneven participation in decision making procedures.</p>	<p>Because there is uneven participation in <i>policy formulation</i> procedures.</p>	<p>Findings 6. Participation that impacts policy outputs is predominantly related to participation by energy firms in specific tasks of policy formulation.</p>

The table above describes the way in which the empirical findings of my thesis provide the foundation for a modified framework of interacting energy justice. The findings provide empirical evidence for the reasoning from environmental justice for procedural injustice and one important factor underpinning recognition injustice (Schlosberg, 2009). Findings 1 and 2 in Table 8.1 describe the way that the

dominance of a technocratic economic discourse limits equal participatory rights. This lack of equality in participation is then sustained by the exclusion of some and the inclusion of others over time. My findings also align with Schlosberg (2009) in that recognition injustice is caused by barriers to participation due to lack of resources for those who are not recognised.

My findings also explain an important element of distributional injustice within policy procedures, in addition to its outcomes. There is extensive research regarding the distributional injustices related to the outcomes of existing energy policies in GB. However, the distributional injustice of the significant inequalities that exist in terms of the resources those engaging in formulating policies have access to, is not explored (Sovacool et al. 2016; Sovacool and Dworkin 2015a). The empirical findings of my thesis suggest that the inequalities in the resources available that facilitate engagement with policy formulation, have an important implication for the meaningful participation required for just procedures. While inadequate access to information and unequal respect are described in procedural and recognition justice considerations respectively, the impact of unequal access to resources to engage in the first place was absent before my adaptation.

While the environmental injustice model of interacting injustices are mirrored in some findings of this thesis (Findings 1 - 3 in Table 8.1 above), I did not find that the full range of causes of environmental injustice could be applied to energy injustice in GB without modifications. I therefore I propose three modifications to incorporate my findings regarding affordable energy policy formulation in GB.

The first recommended modification, identified in Table 8.1 with italicised text, builds on the findings that only acknowledged experts have the power to allocate resources within programmes intended to support distributive justice (Finding 4 in Table 8.1 above). Specifically, social schemes associated with fuel poverty relied on

expertise in developing and delivering energy efficiency and energy bill discounts from energy firms. Energy firms, over time, became the experts in delivering programmes that were evaluated by the regulator. This embedded the expert role some energy supply firms played. Policy formulators who did not deliver these social schemes associated with fuel poverty were not perceived as having this expertise and lacked the resources to overcome the barrier that unequal respect in these procedures played. This constrained the ability of representatives to challenge the regulator and other institutions engaged with regulatory policy formulation procedures. The mapping of institutions and organisations connected to regulatory policy formulation, presented in section 8.2 above, explains a large number of interacting actors and venues. This means that any attempt to challenge the status quo may need to be across a large range of different institutions. Even where a particular way of knowing is adapted or challenged in one institution, this may not be sufficient to effect change. In Chapter 6, analysis of the problem representation identified that a transformation in the understanding of consumers in vulnerable situations was not adopted universally within Ofgem and was largely ignored by other institutions such as the CMA. This constrained recognition justice not only in the allocation of and access to resources under existing frameworks of affordable energy and fuel poverty policy but embeds and replicates inequalities in existing programmes and the development of new ones in the future. This therefore requires a modification that takes into account that recognition injustice occurs when those who are not recognised are discriminated against in allocation of and access to resources *via existing and future programmes*.

The second modification proposed to reflect the findings from my analysis (Finding 3 in Table 8.1) is to incorporate the notion that equal rights of *access* to policy procedures does not necessarily imply equality in *exercising* those rights.

Distributional and recognition injustice is sustained because those who are poorly

resourced are constrained in the extent to which they can exercise their equal rights to access policy procedures. Furthermore, even where a particular way of knowing is adapted or challenged in one institution, this may not be sufficient to effect change. Furthermore, interviewees, when describing their experiences of participation, did not describe equality of respect between different participants. My analysis identified that ex monopoly energy firms were engaged most regularly over the period from 2000 to 2016. Interviewees described inequalities in engagement with Ofgem and other institutions. Recognition justice was therefore directly exacerbated by higher barriers for those whose expertise did not match that of the expectations of accepted experts. My empirical analysis of regulatory procedures and outputs identifies a consistent pattern of dominance of expertise associated with market operations and outcomes.

Not only were these firms those with the most resources available to commit to the procedures of regulatory policy making, their expert status meant that the barriers to engage were lower than for firms and other organisations seeking to engage with procedures of policy formulation, as they were the acknowledged experts in the energy market. The implication of this expert status for recognition injustice is inequality of respect for participants in regulatory policy formulation. The 'experts' did not include a diverse range of organisations that described themselves as representatives for people who use energy in their homes. The experience of these representatives, as described in interviews and reinforced by documentary analysis, suggests that recognition injustice is likely to be sustained while the only organisations accepted as credible, reliable experts are those who adopt the embedded technocratic economic discourse. The recognition injustice of inequality of respect between experts in regulatory policy procedures impacts procedural justice. One of the requirements of procedural justice is meaningful participation. My analysis of regulatory policy formulation identified significant shortcomings in

the extent of meaningful participation, where participants were not recognised as experts within the technocratic, economic discourse.

The third and final adaptation to Schlosberg's framework indicated by the findings of this thesis is the move from *decision making* procedures to *policy formulation procedures*. This important distinction means incorporating the way in which outcomes are shaped by policy outputs which are significantly restricted by the embedded implicit assumptions of those with influence over how and why a problem is represented and characterised in a particular manner. Incorporating a policy formulation focus provides a vital context for the injustices reflected in each of the causes of injustice. It reveals that procedures that result in regulatory policy outputs are characterised by an inequality of participation that inequitably prioritises participation by energy firms.

The inequalities in participation between large energy firms and other policy formulators was due to three factors. First, my procedures tracing between 2000 and 2016 show that the energy firms who were ex-monopoly are among the very few groups of stakeholders that were engaged with the regulator over the full period and had an opportunity to engage and build relationships over time. Second, energy firms had more resources to use when engaging in regulatory policy formulation. Commonly, these resources relate to specialist teams of regulatory experts whose entire professional focus is engagement with regulatory policy makers. Third, the policy actors who formulated energy market regulation respected the expertise from energy firms. This is not the case for others engaging in policy procedures. The result is that those whose expertise was not already recognised faced a more significant barrier to engagement with procedures. Not only was the extent of meaningful participation limited in individual procedures of policy formulation, over time the repeated reinforcement of the market discourse excluded some representatives of people who use energy in their homes.

Participatory injustice was therefore sustained by exclusion of diverse participants through the sustained dominance of the technocratic economic discourse. The opportunity to engage with regulatory policy formulation was open to all. However, there was not an equality of respect for all participants. This contributed to the maintenance of the status quo. Importantly, the maintenance of the status quo continued even when there was an attempt at adopting a new characterisation of consumers. The engagement of a specific policy to move to a dynamic concept of vulnerability, with an explicit commitment to engage with diverse range of participants, did not impact regulatory policy formulation between 2000 and 2016.

8.2.2 Analysing regulatory policy formulation

In this thesis, three frameworks for analysis from three different fields were applied to a corpus of documentary evidence and interview transcripts. This approach had significant benefits in delivering insights into opaque procedures and in explaining the role of implicit assumptions in regulatory policy outcomes, as discussed in section 8.1 of this chapter. The specific benefits of combining these frameworks, along with the challenges, are described below.

The most significant challenge of combining the three frameworks was synthesizing the differences in theoretical backgrounds that informed the development and application of each framework. As described in Chapter 3, both energy justice and tools of policy formulation frameworks specifically aim to include research agendas with broad epistemological claims that have the potential to be practically applicable.

The “What is the Problem Represented to Be” framework is focused neither on providing tight boundaries for research projects nor practical application. Instead, analysing problem representations requires directly engaging with a series of

complex influences at multiple levels and over time (Bacchi and Bonham 2014). Individual researchers seeking to combine frameworks as described in this thesis will also have to face this tension. From the perspective of conducting this research, I align with many other researchers using a critical policy framework - I acknowledge and accept that the probability of challenging an existing inequitable discourse is low but I maintain the intention of clearly evidencing the effects of such discourses in society.

A further challenge to note for any future research is the focus of this research on GB energy regulation. From this thesis, it is not clear if the application of this approach would be similarly accessible in other sectors or countries. The majority of the procedures of the application and use of tools of policy formulation in GB energy regulation over this period are available due to the legal demands on Ofgem as part of the institutional design that seeks accountability for its decision making. Further, this research design included a significant commitment to direct engagement with those using and engaging with tools of policy formulation. It is not clear that this approach could therefore be replicated in all of the areas in which energy justice research seeks to reveal injustice.

Despite these challenges, combining all three frameworks provided important benefits in revealing opaque procedures and explaining the role of implicit assumptions in regulatory policy outcomes. The previous energy justice framework as described in Walker and Day (2012) could not explain *why* inclusive procedures were not impactful on outputs. In particular, *why* the characterisations of energy within the corpus - energy as an essential service or energy as a universal right - were consistently absent from the majority of policy formulation outputs i.e. regulatory policy. This was due to the absence of engagement with the institutionally embedded implicit assumptions of the regulator, in addition to Governments.

As described in Chapter 2, the energy justice framework as applied in UK fuel poverty policy by Walker and Day (2012) was able to identify sources of injustice and provide insight into how challenges in meaningful participation impacted due to two factors. Firstly, understanding procedural justice requires insight beyond the presence or lack of opportunities; the impact of institutionally embedded implicit assumptions in shaping how those opportunities relate to the functioning of procedures, also needs to be understood. Secondly, revealing recognition injustices does not provide sufficient detail regarding the source of inequalities of recognition within a particular institution.

This poses a challenge to the intention behind the recommended practice of engaging proactively with decision makers. While the framework provides the opportunity to identify injustice, it cannot provide actionable insight regarding overcoming it. To be able to build on the injustice revealed by applying the energy justice framework, *why* and *how* injustice occurs also needs to be understood.

As described in detail in Chapter 3, the field of Policy Studies can provide the frameworks to fill the gaps left by applying the Energy Justice framework in isolation. The Tools of Policy Formulation framework (Jordan and Turnpenny, 2015) did identify *how* institutions function in a manner that results in injustice. Further, the “What is the Problem Represented to Be” framework (Bacchi 2009a) can identify *why* the policy outputs of an institution may not be just. An important benefit of combining frameworks is that while the features and outcomes of knowledges can be identified, there is still important insight from considering the detail of *how* functioning of institutions can enforce an existing, embedded discourse. Considering the role of problem representations together with the “Tools of Policy Formulation” framework opens up consideration of the choices individuals have to use outputs of tools or not to do so and the implications of these choices. The most contemporary of the three frameworks applied in this thesis, “Tools of

Policy Formulation”, traces knowledges embedded within regulators, through the application of tools of policy formulation by policy formulators. This provided the insight of how the technocratic, economic knowledges were maintained, even when tools were used to engage with diverse perspectives.

Applying the “Tools of Policy Formulation” framework to empirical data identifies the manner in which these tools are then used to maintain the market discourse and exclude alternatives. Crucially, identifying the way that the procedures used by the regulators excluded some ways of engaging with and understanding the problems to be tackled by regulatory policy, explains how procedures specifically designed to provide the inclusion sought by procedural justice can fail. Revealing the effects of tools of policy formulation identifies how specific opportunities function to invite alternative perspectives to engage in a manner that could have resulted in procedural justice within Ofgem.

Without combining the problem representation analysis with the energy justice framework, revealing injustice would not have provided an explanation of *why* attempts to implement changes within the regulator faced such significant challenges. As described in Chapter 3, the “What is the Problem Represented to Be” framework is particularly valuable in combination with the Energy Justice framework, due to its clear procedures with regards to engaging with the complex historical and societal context, while rigorously evaluating the problematisations brought to the analysis by the researcher.

The effects of the economic frame are explained by analysing the way in which the regulator functions, using the frameworks from Policy Studies. The procedures were delivered in line with the values of the market that are embedded in specific assumptions and logics. Problem representation analysis (Bacchi, 2012) identified two effects of the market discourse that impact the way in which procedures

function in energy regulation within GB. First, people who use energy are associated with a limited concept of people using energy as consumers. The concept of consumer can be seen to incorporate a characterisation of consumers in terms of deficits. Second, the values related to economic growth within elected bodies embed the role of firms through regulatory procedures that portray regulation as a risk to profitable businesses. This narrative encouraged the retraction of regulation, the “cutting of red tape”, as part of the definition of the concept of an effective regulator. The concept of economic regulation was seen to incorporate a characterisation of regulatory institutions as a barrier to economic growth.

In Chapter 6, “What is the Problem Represented to Be?” (Bacchi 2009a), the analysis identified that this inequality was related to the implicit assumptions within economic regulation in GB. The way of understanding regulation and what regulation should be was organised in a way that systematically provided opportunities to the valued expertise of market participants, those who had adopted the market discourse of economic regulation. Those implicit assumptions were focused on the importance of economic growth through the maximisation of shareholder value and underpinned by a minimum of economic regulation.

This thesis found that the procedures of regulatory policy formulation provided a framework that enabled firms to build long term, mutually respecting relationships with the regulator that were not available to others who engaged in regulatory policy formulation procedures. Extending research regarding energy justice by applying a problem representation analysis has enabled me to give a detailed description of how specific characterisations about people and their engagement with energy markets originate, are perpetuated and are challenged. It unpacked in detail competing ideas about how people who use energy in their home could or should be understood within energy regulation in GB.

Without identifying and explaining the role of these concepts and characterisations within Ofgem, an understanding of procedural and recognition justice is limited. By explicitly revealing the concepts and characteristics of information poor consumers that are embedded within the regulators' decision-making, I have provided vital insight into why the participation of some policy actors might be limited and why detailed insights into diverse energy needs within the regulator do not necessarily influence regulatory policy outputs. Without engaging with the role of concepts and characterisations enacted through discourse, it is not possible to fully understand the way in which Ofgem understood and operationalised its institutional remit. By tracing the effects of a technocratic, economic frame, the problem representation approach clearly explains the task ahead of those seeking to challenge the existing frame and to deliver energy justice.

Both of these frameworks from Policy Studies incorporated a strong focus on the empirical development and delivery of policies, that is, what actually happened, without ignoring what did not. They are frameworks that take silences seriously. By incorporating specific concerns regarding those who are not represented, the knowledges that are not included as credible, by the tools which are not chosen, these frameworks provide an important lens with which to examine powerful ideas. One of the key insights of discourse studies in all disciplines is that the more embedded the idea, the less it is questioned or challenged. The status quo simply is. By taking silences seriously, these frameworks provide an excellent foundation for empirical evidence of the influence and outcomes of the uncritical adoption of such ideas.

Without tracing the impact of a discourse with its exclusionary effects, injustice could be revealed by the energy justice framework and explained by problem representation analysis. However, only an examination of the actual applications of policy formulation tools within a regulator, reveals the detail of how diverse

perspectives are accepted or rejected on the basis of the technocratic economic discourse.

This combination of frameworks enabled me to focus on the implications for the embedded implicit assumptions of the regulators to explain how and why it functioned in an exclusionary and therefore unjust manner between 2000 and 2016.

8.2.3 Regulatory legitimacy in GB energy markets

The empirical findings from this thesis demonstrate that with regards to energy justice, regulatory policy formulation in GB between 2000 and 2016 failed to meet the standards set. As energy justice includes participation in procedures, this poses two challenges: first, the traditional definition of ‘capture’ of a regulator and second, whether regulatory policy making in this period failed to meet the standards described in classical regulatory theory of regulatory legitimacy.

8.2.3.1 Regulatory Capture

First, my findings challenge the sufficiency of the traditional notion of regulatory capture. As described in Chapter 2, regulatory capture is conceptualised as the regulator being insufficiently informed or powerful to set an appropriate level of return, particularly in monopoly markets (Robinson 2002). The findings from this thesis suggest that the existing scope of capture needs to be reconsidered to incorporate an understanding of how inequitable recognition of sources of credible, reliable expertise can empower firms even when regulatory institutions specifically set out to operate inclusive procedures. This thesis found that the procedures of regulatory policy formulation provided a framework that enabled firms to build long term, mutually respecting relationships with the regulator that were not available to others who engaged in regulatory policy formulation procedures. This means that firms not only had more resources in the first place to engage with regulatory

procedures, they were able to expend fewer of those resources to take up opportunities to do so.

This aligns with the concept of 'epistemic capture' - a pattern of interaction that enables the influence of energy firms to be more significant in regulatory policy formulation, over and above the influence of other policy actors. As described in Chapter 2, Sunstein (2014) describes the concept of 'epistemic capture' as the capture of a particular way of understanding the appropriate scope of regulatory policy. Specifically, capture by acceptable, normalised ways of understanding could be as a result of regular exposure to the arguments of regulated firms and the absence of engagement with alternative views. Sunstein (2014) concludes that epistemic capture did not occur at Office of Information and Regulatory Affairs between 2009 and 2012. However, the concept of epistemic capture could offer an important insight into the implications of how consumers are known in energy market regulation, in relation to the findings under each individual framework and their combined insights.

First, in Chapter 5, the interaction of inequalities and injustices for recognition in participatory procedures was described in line with the Energy Justice framework (Schlosberg 2009; Walker and Day 2012). These findings revealed that injustices of recognition and procedures resulted in the inequitable respect of experts. Where expertise was associated with knowledge of customer activity, this placed respected experts largely within regulated firms. The implication for capture is that in regulatory policy formulation, regulated firms have more opportunities to influence the regulator than other participants.

Using the TPF (Jordan and Turnpenny 2015) framework, Chapter 6 revealed how this set of institutional implicit assumptions was embedded and reproduced. Findings from this thesis, like Sunstein, suggest that it is not clear that simple

exposure over time to many people with a particular point of view in itself leads to a particular way of understanding being embedded in a regulatory institution. Instead, the findings presented in this chapter suggest that epistemic capture at Ofgem between 2000 and 2016 was the capture of the regulator by the embedded implicit assumptions of technocratic economic regulation from the liberalization policies of economic policy from the 1980's. This enabled and embedded the technocratic economic concept of people as users and consumers of energy being defined by deficits in motivation and understanding. As described in Chapter 6, this benefitted energy supply companies as it shifted the focus away from the behaviour of firms and onto the behaviour of people using energy in their homes. The identification of knowledges and their influence, specifically within economic regulators, illustrates the need for a significantly expanded concept of regulatory capture than the traditional Regulatory Studies focus on the risks of asymmetry between regulatory firms and regulators. Instead, a concept of capture is needed that adopts the influence of values and associated knowledges.

In Chapter 7, the WPR (Bacchi 2009a) analysis identified that this inequality was related to the embedded implicit assumptions within economic regulation in GB. The way of understanding regulation and what regulation should be was organised in such a way that it systematically provided opportunities to the valued expertise of market participants who had adopted the market logics of economic regulation. Those logics were focused on the importance of economic growth, through the maximisation of shareholder value and underpinned by a minimum of economic regulation. Interviewees explained that despite political and press interest in more intervention by the regulator in energy markets, people working at Ofgem formulating energy regulation saw their role as that of creating the optimal competitive market, not responding to concerns regarding the affordability of energy in the home. This insight adds an additional implication for concerns

regarding capture: that regulated firms operate within the market logics of economic regulation and that therefore, their views are institutionally embedded in a manner that other views are not.

The inequalities of influence between different actors of policy formulation in procedures that use participatory tools poses a significant challenge to expectations of the accessible regulatory policy formulation. This is because these participatory tools specifically aim to provide equal opportunities to diverse organisations with a range of perspectives that are proposed to enable regulatory legitimacy.

8.2.3.2 Regulatory Legitimacy

The inequitable participation identified by my analysis poses a second challenge to regulatory legitimacy as outlined in classical regulatory theory. As described in Chapter 2, classical regulatory theory states that a regulator needs to meet five criteria to be able to exercise its powers legitimately: support from legislative authority; procedures of accountability; relevant expertise; efficiency within the organisation; and procedures that are fair, accessible and open (Baldwin et al. 2010b, 2012; Ogus 2004; Robinson 2007).

Table 8.2 Regulatory Legitimacy Findings

Legitimacy Claim (Baldwin et al. 2012)	Problem for Legitimacy Claim (Baldwin et al. 2012)	Empirical Findings (Blakelock)
Legislative mandate - authorization from elected legislature	Parliament’s intention may be vague; Objectives for regulation may be in tension; Discretion of how to deliver objectives is with regulator not legislators.	Delivery of objectives reflects the embedded implicit assumptions of the regulator, Ofgem, and focuses on consumer engagement in competitive markets despite a large range of objectives from its legislative mandate.
Efficiency - legislative mandate is being implemented efficiently or efficient results are produced	Problems similar to legislative mandate claims above; measuring efficiency is difficult*; Question of whether trade-offs between accountability and efficiency are acceptable may be ignored.	Limited engagement by Ofgem with distributional questions in policy formulation tasks. As noted above, legislative mandate covers a range of different areas.
Accountability - regulator is accountable to and controlled by democratically elected representatives	Question of whether trade-offs between accountability and efficiency are acceptable*; Body holding regulator to account may not be properly representative*.	Accountability mechanism of parliamentary Select Committees significantly limited in terms of challenging the choice of regulatory policies enacted.
Due process - procedures are sufficiently fair, accessible and open to expose the regulator to democratic influence	Question of who should be allowed to participate; Question of whether there is an acceptable trade-off between openness and accessibility and efficiency; Question of whether the mode of participation is appropriate.	Transparent and open procedures providing opportunities to all provide evidence in policy formulation tasks. However, limitations of whether these procedures are sufficiently fair due to the significant inequalities of resources between organisations.

Table 8.2 continued		
Legitimacy Claim (Baldwin et al. 2012)	Problem for Legitimacy Claim (Baldwin et al. 2012)	Empirical Findings (Blakelock)
Expertise - Specialized knowledge, skills and expertise have been applied in judgements made	<p>Public is poorly positioned to evaluate expertise with difficulty to explain reasoning to lay persons.</p> <p>Distrust of experts*.</p> <p>Public desire for openness and accountability*.</p> <p>Any conflicts between expertise undermines public confidence*.</p> <p>Public scepticism of neutrality of regulatory decisions where certain parties gain advantages. This may relate to public perception of experts as self-interested or captured*.</p>	<p>Specialized knowledge, skills and expertise are a significant perceived barrier of some third sector organisations in engaging with the regulator.</p> <p>Further, it is not clear that the institutional assumptions related to the technocratic, economic embedded implicit assumptions recognise expertise equally.</p>
*no empirical findings relating to this problem for legitimacy in this thesis		

As described in Table 8.2 above, the first criterion of regulatory legitimacy is a legislative mandate from a democratically elected legislature. As described in Chapter 4, the powers of the energy regulator, Ofgem, were based on the Utilities Act of 2000 which itself was based on the Gas Act of 1979 and the Electricity Act of 1989. However, the legislative mandate of Ofgem did not remain identical over the

period researched. Instead, there were modifications through the Energy Acts of 2004, 2008, 2010 and 2013. Previous research identified that these regular changes meant that there was inconsistency in the expectations of the energy regulator (Deller et al. 2018). In my empirical work, I identify challenges to the legislative mandate criterion that mirror the problem that the discretion of how to deliver objectives lies with the regulator rather than legislatures. In this case, far from Parliament's intentions being vague, concerns regarding the regulators' performance in delivering against their legislative mandate was specifically articulated in the House of Commons. Further, new legislation was introduced which expressly aimed at steering the regulator. However, despite pressure from Governments and Parliament, regulatory policy formulation maintained continuity in terms of existing embedded implicit assumptions of the economic efficiency of competitive markets.

The second criterion of regulatory legitimacy is efficiency. There can be two different considerations of efficiency: the efficient delivery of the legislative mandate and efficient outcomes. As discussed above, my empirical findings identify shortcomings in the delivery of Ofgem against its legislative mandate in terms of how democratically elected representatives sought to direct its activities between 2000 and 2016. In terms of efficiency outcomes, classical regulatory theory explains that a focus on efficient outcomes may in itself be problematic for regulatory legitimacy, as efficiency concerns do not always incorporate distributional outcomes of efficient procedures or efficient resource allocation (Baldwin et al. 2012; Robinson 2007). The findings from Chapter 5 regarding the distributional outcomes, explain that the Competition and Markets Authority found that some of the most vulnerable groups in society were least likely to access the most affordable energy through the energy market. This was not articulated specifically as a problem for regulatory legitimacy between 2000 and 2016. However, as

discussed in Chapter 4, the outcome of unaffordable energy for vulnerable groups was articulated as a failure of existing energy market design and as pointing to the need for new statutory powers for the regulator (Energy Act 2010 and 2013).

The third criteria is accountability of the regulator to democratically elected representatives. The accountability mechanism that existed for the regulator, Ofgem, was accountability to Parliament. As described in Chapter 4, this included ad hoc investigations by the House of Commons and House of Lords Committees into topics that were impacted by Ofgem's work and regular scrutiny by the House of Commons committee, linked to the Government department responsible for energy. Interviewees who participated in my research described significant limitations in the theoretical link between appearance before a Committee in Parliament and accountability. Analysis using the "What is the Problem Represented to Be?" (Bacchi) in Chapter 5 explains how between 2000 and 2016 parliamentary accountability procedures failed to challenge the market discourse. My findings challenge the theoretical expectations of a key foundation of regulatory legitimacy: rather than providing an opportunity for the representation of the problem to be challenged, the parliamentary accountability procedures of select committee scrutiny provided an opportunity for the defence and dissemination of Ofgem's existing problematization. Committees provided an additional opportunity for people perceived as experts to reiterate their views and embed and reinforce existing implicit assumptions.

The fourth criteria of regulatory legitimacy relates to due process. Due processes are procedures that are sufficiently fair, accessible and open, so as to ensure that regulators respond to democratic influences. One problem that these criteria could pose to regulatory legitimacy is in terms of who should be allowed to participate. In the majority of regulatory policy formulation procedures between 2000 and 2016, my findings suggest that procedures were open to all. Regulatory policy formulation

usually includes the transparent publication of intentions and the opportunity to provide insight and evidence when assessing options for regulatory policies. However, the Tools of Policy Formulation analysis presented in Chapter 7 identified that there were informal venues of regulatory policy formulation that were not open to all. Firstly, the trade association Energy UK co-ordinated the creation of codes of practice with its members (energy suppliers) to develop co-regulation on the topics of face to face energy sales, disconnection of domestic energy supply and the presentation of bills. Second, parliamentary committee hearings did not provide the equal ability for all to provide their input into scrutinising the regulator. This limits the extent to which the procedures can be argued to have been sufficiently fair, as regulatory policy formulation procedures were not systematically open to all.

In discussing due process as a criteria for regulatory legitimacy, Baldwin et al. (2012) note that considerations of these rarely specify who participates or in what manner participants engage with a regulator. In GB regulatory policy formulation, the rules of participation are set out in guidance from the UK Government and specify a public consultation procedures. However, this thesis has explained that the consultation procedures between 2000 and 2016 were not equally accessible and open to different groups. The findings of this thesis would suggest that a crucial problem for legitimacy relates to the third problem of regulatory legitimacy identified by Baldwin et al. (2012) related to due process: whether the mode of participation is appropriate. Due process includes the requirement that procedures are sufficiently fair. While there is not yet a strict definition of 'sufficiently fair' due process in Regulatory Studies, the inequality of access to and influence on, regulatory policy formulation identified by my analysis suggests that energy supply firms had an unfair advantage when engaging in the tasks of regulatory policy formulation.

The fifth and final criteria of regulatory legitimacy is that specialized knowledge, skills and expertise should be used in judgements made by the regulator. In problems of legitimacy described by Baldwin et al (2012), the difficulty is that presenting justifications to the public could be a challenge due to the lack of expertise that lay people have. While public opinion was not measured as part of this research, academic research that did so within the period 2000 to 2016, shows that there was public concern regarding the trustworthiness of energy supply companies in the energy market (Becker et al. 2019; Demski et al. 2017; Pidgeon 2012). The fact that energy supply companies have been shown as facing lower barriers when engaging with the regulator than other policy actors, may therefore be a challenge to regulatory legitimacy.

The concept of expert judgement that is discussed in classical regulation theory is based on the framework of economic regulation which argues that expertise in a specific market needs to operate separately from non-experts - whether the non-experts be in government or lay members of the public. This expertise is valuable in that it enables engagement with the complex interaction of factors required to develop and deliver a competitive market without regulatory failure (Baldwin et al. 2010a; Littlechild 2002; Ogus 2004). It is only after implementation (ex - post) that judgements need to be justified to non-experts outside of the regulatory system, in procedures that relate to accountability.

The findings of my research suggest that this framework that separates regulatory expertise was not operating in Ofgem between 2000 and 2016. Instead, procedures of engagement with a range of organisations with diverse expertise were invited to participate in regulatory policy formulation. First, as described in Chapter 4, from 2009, regulatory policy formulation related to consumers in vulnerable circumstances by specifically articulating the need for experts in the lived experience of vulnerable consumers within regulatory policy formulation. Second,

from 2007, lay members of the public were directly engaged with commenting on regulatory policies as they were formulated through deliberative workshops. Public distrust of regulatory expertise in the scenarios considered as potentially problematic by Baldwin et al. (2012) did not, therefore, arise.

It is instead the interaction of expertise and due process that my analysis identifies as most problematic for regulatory legitimacy. Distinct from the conceptualization of expertise and the problems envisaged by Baldwin et al. (2012), my findings explain a distinct challenge to legitimacy posed by concerns regarding fairness. Rather than the acceptability of judgements related to expertise within the regulator, my findings suggest that it is the narrow definition of expertise used in the characterisation and representation of problems within Ofgem between 2000 and 2016 that resulted in challenged regulatory legitimacy.

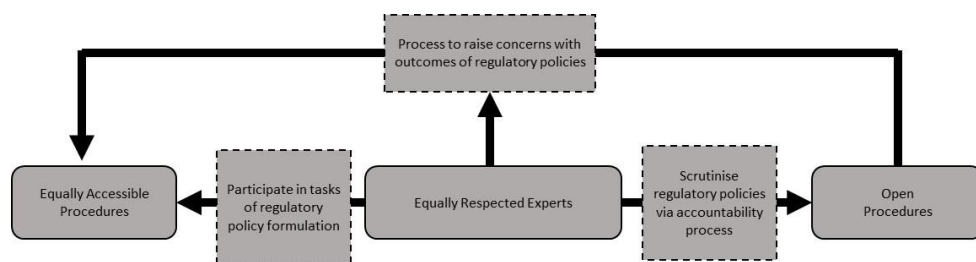
Ultimately, legitimacy of regulatory policy between 2000 and 2016 was most significantly undermined by significant failures in three of the criteria of regulatory legitimacy: due procedures, efficient execution of the legislative mandate and accountability. Failures in the accountability procedures and the execution of powers under the legislative mandate insufficiently challenged the discourse of competitive market implementation despite its evident harms ex post. Further, efforts to introduce regulatory policy that would address market failures that were harming people who need energy did not meet the criteria of due process and this also undermined regulatory legitimacy. The analysis presented in this thesis suggests that the existing theory of regulatory legitimacy requires adaptation in order to reflect the interaction of due process with other criteria, particularly expertise.

Figure 8.3 proposes an interaction that captures the important ways in which energy injustice might occur. While this prototype is only based on the findings in

this thesis and the context of previous literature, it does propose how empirical research might go about responding to considering the impact of “sufficiently fair” due process, with a virtuous circle of regulatory legitimacy based on equal respect for the expertise of all those who engage in regulatory policy formulation.

Regulatory legitimacy respects due process by providing sufficiently fair access to, and scrutiny of, regulatory policies. On the basis of my findings, I argue that regulatory legitimacy should rely on three criteria of equally respected experts and open, equally accessible procedures in Figure 8.3 below.

Figure 8.3 Fair Due Process for Regulatory Legitimacy



These three criteria are supported by at least three procedures that enable participation in regulatory policy formulation and scrutiny of regulatory policy and their outcomes via accountability procedures. For fair due process, equally respected experts must be able to play a dual role. First, they must be able to be participants in tasks of regulatory policy formulation in equally accessible procedures. Secondly, they must be able to use open procedures to scrutinise regulatory policies via accountability procedures. Crucially, my findings show that the cycle must be completed with a procedure that enables concerns to be raised regarding the outcomes of existing policies. Outcomes that raise concerns could then be corrected with new regulatory policies which would be formulated using equally accessible procedures.

8.3 Chapter Conclusion

This chapter has discussed the findings of this thesis when combining insights from all of the preceding chapters. I have suggested that the findings from “What is the Problem Represented to Be” and the “Tools of Policy Formulation” frameworks provide important insights with regards to explaining how and why inequalities arise in terms of opportunities to participate in regulatory policy formulation. Rather than equal participants providing insights from diverse perspectives, energy supply firms and their representative trade body have a unique ability to formulate policy both as a venue of policy formulation and as respected experts in energy markets, within a technocratic, economic frame of regulation. As described in section 8.2.2, frameworks from policy studies can play an important role in revealing important features of energy policy development (Bacchi 2009b; Jordan and Turnpenny 2015).

For energy justice scholarship, these findings highlight the importance of engaging directly with the institutional embedded implicit assumptions that operate within a given policy area. Specifically, adopting a perspective of policy formulation with the intention to reveal implicit problem characterisation and representations, ensures that energy justice scholarship can reveal important details of *why* and *how* procedural and recognition injustice operate. My findings were focused on the period 2000 to 2016 in Great Britain where strict rules of transparent and open policy procedures were met. Evidence in the corpus revealed a large number of opportunities, with interviewees from the regulator describing significant efforts to secure insights from a diverse range of organisations and directly from members of the public. My proposed adaptations to the energy justice interaction framework in Figure 8.2 explained why these efforts were insufficient: ultimately, the high number of opportunities to engage were not sufficient to balance the existing

embedded implicit assumptions of the regulator that were maintained throughout the period.

My findings pose an important challenge to those concerned about regulatory legitimacy. In evaluating the relevance of expertise within policy procedures, concerns regarding the role of different organisations in regulatory policymaking should not be at the expense of paying attention to the inequalities of respect that influence the perceptions of regulators. Failing to take account of inequalities in respect given to different actors leads to the important influence of regulated firms in their interactions with the regulator being overlooked. In section 8.2.3 I explained that Sunstein's concept of 'epistemic capture' could be central in understanding the role of the perceived respect of the evidence provided by firms due to the expertise of firms in the economic, technocratic way of knowing consumers (Sunstein, 2014). This inequality poses an important challenge to considerations of both energy justice and regulatory legitimacy.

Together, my findings provide a lens through which I show that policy engagement opportunities within procedures alone are woefully inadequate at enabling the equitable participation required by both energy justice and regulatory legitimacy. This is a result of three overarching features of regulatory procedures: a focus on formulating policies without considering the problem that policies aim to solve; a hesitancy to introduce rules beyond information provision; and an inequality of respect for diverse experts. I explore the implications of these findings for future academic research, and regulatory policy in practice, in my final concluding chapter.

Chapter 9 - Conclusion

9.1 Inequitable Regulatory Procedures

In this thesis I set out to answer the question “*What role did knowledges of ‘consumers’ play in the formulation of GB energy market regulation between 2000 and 2016?*” I found that the knowledges that influenced the formulation of GB energy policy and regulation between 2000 and 2016 consistently maintained a technocratic, economic concept of decision optimizing purchasers. This particular concept of ‘consumers’ as decision optimizing purchasers was challenged within multiple procedures during the period studied. However, the role of a consumer engaging in the energy market is firmly entrenched in the wider set of expectations relating to the operation of an energy market. The possible benefits of the competitive retail energy market as a framework have been prioritised in Great Britain to such an extent that the outcomes of market arrangements - lack of affordable energy to some of the most vulnerable people in society - were not accepted as sufficiently relevant to the formulation of regulatory policy to reject market arrangements.

The analysis undertaken using the Energy Justice framework - presented in Chapter 5 - identified that regulatory policy in GB between 2000 and 2016 was problematic in terms of distributional, recognition and procedural inequalities. First, policies formulated within the regulator can be seen to have had distributional outcomes. Specifically, the market design choices of Ofgem resulted in the cheapest energy tariffs being accessed the least by some of the most vulnerable people in society (Competition and Markets Authority 2016b, 2019). On a smaller scale, the regulator had a distributional impact in the allocation of part of the Warm Home Discount scheme. Second, policies formulated within the regulator inequitably recognised different types of expertise regarding knowledge and understanding about people

who use energy in their homes. Thirdly, policy procedures within the regulator exacerbated inequalities in resource and limit participation by third sector organisations with specialist knowledge about the impact of unaffordable energy services.

Chapter 6 showed that expertise that focused on market outcomes failed to respond to concerns about unaffordable energy and yet this focus was systematically embedded and reproduced in regulatory policy formulation between 2000 and 2016. Analysis using the Tools of Policy Formulation framework (Jordan and Turnpenny 2015) identified three important features of regulatory policy formulation in the period studied. Firstly, it identified that regulatory policy formulation tasks were undertaken outside of the regulator. While some of these tasks were acknowledged policy formulation sharing across Government and the regulators, some were conducted within the unelected trade body for energy suppliers, Energy UK. Second, participatory tools were specifically selected by the regulator between 2007 and 2014 with the articulated aim of incorporating diverse views on regulatory policy formulation. This attempt was clearly described by interviewees from within the regulator as important work that sought to broaden knowledges of consumers. However, these attempts failed to translate into regulatory policies that impacted the operation of the energy market. The reason for this is identified by the third feature, revealed by identifying the tasks of policy formulation and how they interacted with the participatory tools. Participatory tools - consultations and deliberative focus groups - were predominantly used to assess options that had already been selected by the regulator in line with its traditional problem representation.

The reasons why the role of expert knowledges associated with consumers in the market played such a significant role in Ofgem between 2000 and 2016 were identified by using the “What is the Problem Represented to be” (Bacchi 2012)

analytic framework. As described in Chapter 7, ‘consumers’ were presented as the problem in the energy market as they failed to engage with energy suppliers to identify and secure a good deal. This representation of the problem was challenged in some regulatory policy formulation. While an accountability procedure technically existed via Select Committees to critique this problem representation, interviewees explain that the procedures in securing scrutiny that resulted in any challenge to the existing assumptions of the regulator were inadequate. Thus, any challenge to the embedded knowledges of economic regulation and predicted benefits of competitive retail energy markets were rejected.

9.2 Recommendations

9.2.1 Future Research

Research from three multi-disciplinary fields provided a fruitful foundation for this analysis of regulatory policies in the energy markets of Great Britain between 2000 and 2016. In this thesis, I have identified two important features of GB policy-making that can also provide a foundation for future research. First, I have explained the complex interactions of organisations and institutions in formulating the policies that can impact the affordability of energy in people’s homes in Great Britain. Second, I have identified the effects of market development discourse in energy regulation on regulatory legitimacy. I outline the implications of these for future research in turn in the subsections below.

9.2.1.1 Complexity of policy formulation system

My findings will support future research that specifically focuses on energy within Great Britain. The mapping of the energy policy system in Chapter 8 can provide a starting point for identifying the range of organisations involved in energy policy

development, not just regarding energy in the United Kingdom but other nations moving towards the regulated, competitive market British Model, mandated by the EU's Third Energy Package. While the specific organisations and institutions may change, under the market model, the spaces (or Boxes in Figure 8.2 in Chapter 8) will be broadly consistent.

My findings suggest that this will be particularly relevant if mapping is undertaken with regards to participation in energy policy development. There are implications for two of the foundation literatures for my thesis: Energy Studies and Energy Justice. As I described in Chapter 2, the field of Energy Studies provides case studies of energy policy-making in Great Britain that consider how policy makers' knowledges of people who use energy in their home, has impacted those policies (Cotton and Devine-Wright 2012; Shove and Walker 2014). This research from the energy system beyond the markets argues that the way that people are conceptualised within policy-making procedures shapes the way that citizens are able to participate in energy policy decision-making and, ultimately, the design and implementation of those policies (Devine-Wright 2005b; Guy and Shove 2014; Pallett and Chilvers 2013). Energy Justice research describes how the design and implementation of energy policies has important ethical consequences and that in the processes followed by decision makers, it is vital to understand the extent to which policies can be described as 'just', particularly in the contemporary era of energy system transformation. My mapping suggests that a concern with participation in energy policy should incorporate a similar activity to understand the complexities of interacting policy spaces. This would enable the identification of participation opportunities on the one hand but also the barriers to participation on the other. The link between the complex interactions of different opportunities to engage in affordable energy policymaking is central, as it enables the insight that an ever-increasing number of opportunities might, in itself, be a barrier for

equitable participation. This insight could then be combined with my proposed adapted framework for understanding the interaction of inequitable processes (Figure 8.2.). Both the initial mapping and the identification of its implications for injustice in terms of procedure and recognition, would benefit future research that considers the implications for participation in institutional contexts.

9.2.1.2 Regulatory Legitimacy

Regulatory studies provide insight into the intended consequences of institutional frameworks and probable opportunities and challenges that arise from particular types of institutional design (Baldwin et al. 2012; Koop and Lodge 2017).

Specifically, they highlight how economic regulators, independent from democratically elected governments, could be held accountable and make claims to regulatory legitimacy. My findings regarding inequitable access and its connection to an economic discourse that focuses on market development has implications for future research regarding participation in regulatory processes and concepts of legitimacy.

First, my findings regarding the inequitable recognition within, and resources to engage with, Ofgem between 2000 and 2016 make an important contribution to the emerging research agenda within Regulatory Studies described in Chapter 2. This academic research has begun to explore how citizens might engage with economic regulators (Haber and Heims 2016; Heims and Lodge 2018). However, the focus has hitherto been on the provision of opportunities to engage in existing procedures. The influence of embedded values within regulatory agencies identified by my analysis also provides a further challenge to Regulatory Studies in its identification of the way in which problem representations impact participation in regulatory procedures. My analysis explains the shortcomings of research that limits its focus to opportunities to engage. It demonstrates that provision of opportunities may be

the foundation for participation but can have limited influence on outcomes. Provision of insight from participatory procedures does not guarantee its use by those working within a regulator. In order to engage with the breadth of ways in which knowledges play a role in economic regulators, Regulatory Studies scholars must begin to consider problem representations. Without this understanding, the operations of institutions that claim to provide accountability and legitimacy will be limited. This significantly limits any understanding of the operation of institutional frameworks that claim to provide accountability and to ensure the legitimacy of regulatory decision-making.

Second, my findings trace the impact of problem representations within energy regulation and how they create barriers to incorporating public concerns regarding affordability of energy and fair outcomes. My findings highlight the importance of silences of economic regulation. In addition to the theoretical consideration of regulatory legitimacy, participation in regulatory procedures by future research also needs to understand the venues of regulatory policy formulation and the boundaries of the procedures, i.e. what is unsayable in regulatory venues. In Chapter 4, I described the formal role of Governments in formulating an important GB sphere of affordable energy policy: fuel poverty policy. Technically, the legal responsibility between the Governments of Great Britain and the regulator were clearly defined and separated - democratically elected Governments formulate fuel poverty policy. Responsibilities that formally sat with Governments included defining who should be assisted by fuel poverty policy and experiences of fuel poverty policy implementation that were used to develop each iteration of fuel poverty schemes. The regulator, Ofgem, had a limited formal role: to monitor the delivery of the schemes as defined by elected Governments and to consider fuel poverty in their own, separate, policymaking.

However, in Chapter 5 I explained that Ofgem had a previously unidentified role in fuel poverty policy. Specifically, it provided a venue for the targeting of part of the Warm Home Discount and therefore had distributional outcomes. Policy formulation regarding fuel poverty policy schemes that were hosted by Ofgem was a between 2000 and 2016, continue to date. Future research considering these fuel poverty schemes should therefore consider the probable implications for the regulatory embedded implicit assumptions present in energy market regulators and enduring policy formulation; particular attention needs to be paid to the ‘silences’ within regulatory policy formulation.

Interviewees who explained the concern regarding the capacity of regulatory policy formulation to incorporate inequality, fear or death as a result of unaffordable energy. Indeed, they described the way in which regulatory policy formulation refused to engage with these issues when considering evidence. This meant that any individual choosing to engage with policy formulators beyond the credible realm of technocratic economic expertise, took the risk of being excluded. When prompted to expand on this silence, interviewees described elements of lived experience of energy services use that were not discussed in policy formulation yet made up a significant part of public concerns. Future research regarding participation in regulatory policy formulation needs to be able to identify these ‘silences’ within regulation.

While death as a result of unaffordable energy and inequality in society were excluded from regulatory policy formulation, references was made to them in broader energy policy (National Energy Action 2019). However, one significant silence was the emotion of fear as a response to energy firms. The reasoning behind this silence may be partially understood by examining certain studies in the Energy Studies literature. According to these studies, in energy infrastructure policy-making, credibility is linked with rationality and a lack of emotion, with procedures

explicitly designed to retain a focus on the technical and emotional responses excluded or actively belittled (Lange 2002; Pedwell 2014; Wetherell 2012). Empirical studies that have engaged with the role of emotions in infrastructure policy decision making show that consultative procedures can be destabilised by attempts to retain a focus on technical and engineering knowledges (Cass and Walker 2009). A focus on such technical knowledges characterises concerns linked to emotions as irrelevant articles in need to actively manage emotions out of procedures and procedures of decision making (Cass and Walker 2009; Koenig-Lewis et al. 2014; Pedwell 2014; Wetherell 2012). However, the role of emotions in terms of affordable energy has been explained in contemporary fuel poverty research (Deller et al. 2018; Longhurst and Hargreaves 2019) and therefore emotion is therefore particularly important silence when considering regulation and unaffordable energy prices in future research.

9.2.2 Policy Recommendations

This thesis has analysed a single regulator of a single market in GB in a defined period. However, this was a period of significant change in expectations in terms of the scope of regulatory policy in a market that delivers an essential-for-life service. When looking at the practical implications for policy, I have therefore focused on the contemporary work of the regulator, Ofgem, the ongoing policy debates in GB regarding regulation and considered the implications for a further essential-for-life regulated sector - water.

One of the opening concerns of this thesis was the gulf in expectations of regulation between the public and their elected representatives and Ofgem. While there was a narrative that the regulator should actively engage with concerns regarding affordability and the unfair outcomes of the energy market, Ofgem maintained a

focus on implementing competitive markets. Indeed, there was an active argument that ‘fairness’ should not be the focus of an economic regulator - though few reiterated the claim by the father of the energy market in GB, Stephen Littlechild, that the word “fair” should be banned under the roof of the regulator’s offices (Littlechild 2019) .

After the end of the period considered in this thesis, Ofgem saw a further change to its statutory powers as a result of legislation: that it should implement a temporary price cap. This transformation of regulatory policy to an interventionist one engages directly with the narrative of fair prices: the consultation for a future energy retail market stated “We will therefore continue to work with industry to explore protections where necessary to ensure that all customers are able to secure a fair deal” (Ofgem and the Department of Business, Energy & Industrial Strategy 2019). Further, Ofgem’s recent Consumer Vulnerability Strategy saw fairness literally placed at the centre (Ofgem 2019a).

Figure 9.1 The five themes of Ofgem’s CVS2025 (A Consumer Vulnerability Strategy for 2020 - 2025)
(Ofgem 2019a, p.15)



Figure 3: The five themes of CVS2025

However, it is not clear that the engagement with the narrative of fair outcomes will result in any change in the role of diverse knowledges within the economic regulator, Ofgem, or the logic that underpins their regulatory policy formulation procedures. Notably, the flagship policy areas of the Future Energy Retail Market and the Consumer Vulnerability Strategy both note the end of price cap legislation in 2023 and the benefits of competitive markets. Affordable energy is still predominantly articulated as an outcome of market engagement in regulatory policies. For example, the future retail market consultation states that “Well regulated, efficient markets are the best driver of results for consumers” and goes on to conclude that “In the long-term, the market design must ensure that all consumers are able to reap the benefits of competition and get a fair deal for their energy” p. 11 (Ofgem and the Department of Business, Energy & Industrial Strategy 2019). It is not therefore necessarily the case that the temporary policy of price regulation or the engagement with the terminology of fairness, will drive outcomes that benefit consumers any more than in the period 2000 to 2016. The continuity of a technocratic, economic discourse over the period analysed, despite some individual policies in the period analysed, suggests that price regulation may not be sufficient to challenge the enduring commitment of the logic that competitive markets will deliver optimal outcomes and should therefore be pursued independent of the fatal implications of a lack of access to affordable energy that have been its consequences in the past.

The embedded nature of the focus on competition has, for example, been maintained in the adoption of a new tool within Ofgem after 2016. In a report called “Pioneering policy making” Ofgem explained that regulatory activities have adopted a further tool of formulation that enables interaction with the public - user experience (UX) designers embedded in regulatory policy teams (Ofgem 2019c). Following a pilot in 2019, regulatory analysts work in teams that include individuals

who test assumptions and proposals with consumers. However, it is notable that the publications so far show that this approach has not expanded the ability of the public to decide on the topics under discussion. Instead, the focus on switching energy supplier has been maintained (Ofgem 2019c).

The implications of the logic of competitive markets for essential-for-life services is no longer limited to energy. In 2014, the Coalition Government passed legislation to begin a period of market reform in water, stating that “The government is taking action to open up markets to new entrants, driving greater competition and providing consumers with more choice” and that the government will work with water companies to begin the transition to retail competition before the end of this Parliament” (House of Commons Library 2016b). A water market is only currently in place for non-domestic consumers in England, with no existing announcement to use the legislative framework to introduce retail competition for a domestic water market at the time of writing. However, the government has used an identical logic of efficient market outcomes in its legislative reforms as was visible in the energy market (House of Commons Library 2016c).

This logic is also visible in the current investigation into the scope of economic regulation undertaken by the National Infrastructure Commission, scoped to “assess what changes might be necessary to the existing regulatory framework to facilitate future investment needs, promote greater competition and increase innovation, and meet the needs of both current and future consumers” (National Infrastructure Committee 2019a, p. 2). There is, however, an opportunity for a discussion to be had, regarding the needs of “existing and future consumers” to include affordable access to essential-for-life services in the National Infrastructure Commission. While the Government launch of the commission focused on competition and innovation, the NIC itself notes that the review “should take account of distributional issues,

consumer disengagement and the scale and quality of consumer protections across the regulated sectors” (National Infrastructure Committee 2019b, p. 4).

To avoid repeating the shortcomings of regulatory policy formulation identified in this thesis between 2000 and 2016, I recommend extended accountability procedures and novel training for policy formulators to provide new opportunities that ensure that alternative views have an influence on regulatory policy formulation. I describe seven policy recommendations in Table 9.1 These are relevant within energy regulation, future considerations regarding the water market and actions taken following the National Infrastructure Committee report.

Table 9.1 Policy Recommendations

	Finding	Recommendation
1	Regulatory policy has a distributional impact	Include distributional implications of regulatory policies in annual report rather than rely on rare market investigations by Competition and Markets Authority
2	Accessible procedures to engage with <i>all</i> tasks of policy formulation were not enabled between 2000 and 2016	Transparent publication of all opportunities to participate in tasks of policy formulation using plain English
3	Access to opportunities to participate is mediated by resources and perceived ‘insider’ status	Resources to be made available for small organisations to engage directly with regulatory policy formulators to meet the number of opportunities energy supply firms secure to engage with procedures
4	Informal venues of policy formulation were used between 2000 and 2016	The energy supply firm trade body is not an accessible or accountable body and Ofgem should cease delegating policy formulation tasks to it immediately
5	Understanding of implications for inequalities within institutions is needed	Training for regulatory policy formulators to include unconscious bias training similar to that undertaken in recruitment training

The first recommendation relates to one of the important trends of regulatory policy formulation between 2000 and 2016 at Ofgem: the introduction of new powers regarding fuel poverty amelioration schemes and new evidence from the CMA Investigation about the distributional impact of the energy market (Competition and Markets Authority 2016b, 2019; Ofgem 2015e). This is because the distributional impact of regulatory decision-making has been exposed as significant and enduring. This understanding means that policy makers cannot rely on an investigation by the CMA to track the distributional impact of regulatory policymaking on people who use energy in their homes. Instead, the impact of energy regulation on people in their homes should be a central pillar of transparent regulatory reporting to provide the foundation for procedures of accountability of Ofgem.

The second recommendation results from the finding that Ofgem followed guidance to deliver transparency in the development of regulatory policies but failed to provide accessible policy formulation. Interviewees painted a complex range of interacting institutions and organisations that impacted policies and therefore influenced the affordability of energy in GB. An annual report should therefore be published explaining the range of opportunities to engage and the formal and informal role of the organisations in policy development tasks. Further, this report should be in plain English to ensure visibility of where decisions impacting the allocation of costs in the energy system will be made. It should include a list of all of the opportunities available to engage with regulatory policy formulation, including clarity on the type of formulation task (line 2 in Table 9.1). Small organisations with limited funds could then decide whether to assist in option assessment under an existing problem representation or campaign on any need to incorporate other problem characterisations into procedures or reviews.

A third recommendation that would also provide more equitable access to regulatory policy formulation is to focus on resource inequality of participants (line 3 in Table 9.2.2). This includes traditional abilities to finance a team of regulatory experts but also the access to the status of 'expert'. Ensuring equitable resource availability would be a significant challenge so funding for small organisations to engage directly with regulatory policy may be required in order to provide insight from other actors besides energy firms. An alternative to making access to regulatory procedures more equitable would be to cap the resources available to large energy firms to participate, thereby closing the resource gap between different stakeholders engaged in procedures of regulatory policy formulation.

The fourth recommendation that could also ensure more equitable procedures of policy formulation is reviewing the use of the industry body as an informal venue of policy formulation. There is no democratic mandate for any policy formulation tasks to be undertaken by the industry body representing supply firms. The procedures are not transparent or accountable. Ofgem should therefore cease the practice of informal delegation of policy formulation to the industry body.

Each of the proceeding recommendations (line 1 to 3 in Table 9.1) provide broader opportunities for the engagement of new, diverse perspectives for regulatory policy formulation. However, it is important to note that a core contribution of this thesis is that opportunities alone are insufficient to deliver equal participation in energy policymaking. Enabling equality in society and support the respected expertise of all is unlikely to begin within the energy regulator of GB. However, a small first step towards inclusive policy-making procedures would be to ensure that energy regulators themselves are trained to consider diverse views. This should begin with the urgent training of all staff with unconscious bias training, to provide individuals with the tools to challenge biases they observe in their own work and the work of their peers.

9.3 Chapter Conclusion

At the start of this thesis, I described a gulf in expectations of the policy response to the often-fatal consequences of a lack of access to affordable energy between 2000 and 2016. Though the outcomes of the energy market on people who could not afford energy were widely acknowledged by the public to be unfair, considerations of fairness were not accepted as relevant in the institutional framework that governed much of the affordable energy landscape: that of economic regulation (Littlechild, 2019). I argued that understanding this gap in expectations between the public and their elected representatives on the one hand and those who made and implemented the policies on the other, plays an important role in understanding the policy choices made between 2000 and 2016. Further, to understand the policy choices made, one has to understand how people who use energy in their homes were understood within procedures of policy. Due to the policy of competitive retail energy markets, this predominantly meant understanding how ‘consumers’ were known within the procedures of regulatory policy formulation between 2000 and 2016.

Where possible, insights into the identification of the way that regulatory policy is made -in terms of the how and the why -have been discussed by combining frameworks founded on literatures from multiple disciplines. Against the standards set by Energy Justice research - meaningful participation of respected diverse representatives - Ofgem failed significantly between 2000 and 2016. It is not clear that the regulatory policy has resulted in any significant changes since 2016, despite continuing public concern in response and despite the efforts of charities to highlight the extent of the implications of unaffordable energy on cold weather deaths (National Energy Action 2019).

The role of the regulator in delivering more affordable energy through lower energy prices has changed significantly since the final year of analysis. Since 2016, legislation which introduced a temporary price cap enforced direct regulation in a manner not seen since 2002 (Ofgem 2019b). Furthermore, the definition of vulnerability introduced in 2013 is central to proposed reforms on the practices of energy suppliers that include proposed new rules to stop harmful practices by energy suppliers (Ofgem 2019d). Ofgem has introduced a new tool to engage directly with the public which could, in time, consider topics beyond switching (Ofgem 2019c). These changes could enable a novel consideration of fairness and equitable outcomes in energy regulation. Whether this comes to pass will be an important question for future research.

Appendix

Table A1 EJF Coding Frame

As described in section 3.2, the EJF has three pillars: distributional, recognition and procedural justice (Jenkins et al. 2014). Procedural justice for affordable energy in the UK has been further broken down into three elements: transparent processes, meaningful participation and redress (Simcock et al. 2016a; Walker and Day 2012). I therefore began with the coding categories in the left-hand column. In response to the themes that emerged while engaging with the data, I developed the nested codes in the right-hand column.

Coding Category	Nested Codes
Distributional Justice	Cross subsidy
Recognition Justice I	Vulnerable Consumers
Recognition Justice II	Consumers in vulnerable circumstances
Procedural Justice I Transparency	Publication of processes
Procedural justice II Redress	Redress process occurred
Procedural justice III Meaningful Participation	Participation opportunity

Table A2 WPR Coding Frame

As described in Table 3.2.1, the WPR framework poses a series of questions (Bacchi 2009b). Each of these was a coding category. Many of the questions did not result in any further nested codes. However, where themes emerged that separated out differences, I used nested codes (listed in the right-hand column) to review evidence from the full corpus.

Coding Category	Nested Codes
What is the policy or regulation proposing?	n/a
What presuppositions or assumptions underlie this representation of the 'problem' I	Consumer behaviour
What presuppositions or assumptions underlie this representation of the 'problem' II	Energy supply firm decision maker
What presuppositions or assumptions underlie this representation of the 'problem' III	Regulatory knowledge
What practices and processes have led to this representation?	n/a
What concepts, categories and characteristics are used I	Consumer
What concepts and categories are used and characteristics II	Vulnerable Consumer I
What concepts and categories are used and characteristics III	Vulnerable Consumer II

What concepts and categories and characteristics are used IV	PPM Consumer
What concepts and categories are used and characteristics V	Fuel Poor
Can the 'problem' be thought about differently (has it been thought about differently historically?)	n/a
What discursive effects are produced by this representation of the 'problem'?	n/a
What lived effects are produced by this representation of the 'problem'?	n/a
How/where has this representation of the 'problem' been produced, disseminated and defended?	Consultation Responses
How/where has this representation of the 'problem' been produced, disseminated and defended?	Deliberative focus groups
How/where has this representation of the 'problem' been produced, disseminated and defended?	Select Committees
How/where has this representation of the 'problem' been produced, disseminated and defended?	Competition and Markets Authority
How could it be questioned disrupted, reproblematised and replaced?	Select Committee
How could it be questioned disrupted, reproblematised and replaced?	Legislative Act

Where are the silences?	Fear as lived experience of energy
Where are the silences?	Death as outcome of lack of affordable energy
Where are the silences?	Inequality as context of affordability of energy

Table A3 TPF Coding Frame

As described in Table 3.2.2, the TPF framework poses a series of questions to answer (Jordan and Turnpenny 2015). Many of the questions are stand-alone codes that could be used without adaptation. However, different tools used in policy formulation led to further nested codes along with their respective values. I therefore introduced further nested codes as listed in the right-hand column in the table below.

Coding Category	Nested Codes
Why do these actors develop and/or promote particular tools?	n/a
Why were particular tools developed, when and by whom I	Deliberative focus groups
Why were particular tools developed, when and by whom II	Indicators
Why were particular tools developed, when and by whom III	Stakeholder consultations
What values do the tools embody	Legitimacy through due process
What values do the tools embody	Legitimacy through expertise
How do tools and venues intersect in practice?	Participation - Deliberative Focus Group
How do tools and venues intersect in practice?	Participation - Stakeholder Consultation

How do tools and venues intersect in practice?	Indicator - Market Monitoring
How do tools and venues intersect in practice?	Indicator Social Obligations Reporting
What factors enable capacities related to this tool?	n/a
What factors constrain capacities related to this tool?	n/a
What substantive effects does the tool generate when employed?	n/a
What procedural effects does the tool generate when they are employed?	n/a

Table A4 Keywords

I used the keywords listed below to identify documents to include in the corpus. Each document was published within the time period 2000 to 2016 and is listed in full in the bibliography. I opened each document in the Ofgem archive and conducted a key word search to review for inclusion. I used the same keywords to include a document from the CMA market investigation (Competition and Markets Authority 2014, 2016b).

Regulatory Archive (Ofgem; Competition and Markets Authority)	Parliamentary Archives (UK House of Parliament, Scottish Parliament, Welsh Assembly)
Domestic	Energy
Residential	Energy bill
Market	Electricity bill
Supply	Gas bill
Consumer	Energy price
Redress	Electricity price
Energy bill	Gas price
Fuel Poverty	Fuel Poverty
Vulnerable	Ofgem

Table A5 Topic Guide

Interviewees were approached online with a list of three topics to discuss. These are listed as themes in the table below. These themes emerged from connections to the three frameworks outlined in section 3.2. I included in my topic guide an opening question for each theme to prompt me, if needed, to move between themes. I also included a column to capture specific prompts that I could include if there was a question related to an item of interest in the documentary analysis.

Theme	Framework questions	Opening questions	Specifics prompts
How organisations go about engaging with institutions and organisations who develop and deliver energy policy	Procedural Justice Who are the actors participating in policy formulation? What factors shape the selection and deployment of particular tools in particular venues ?	Your organisation and your role	Individual to interviewee
Any distinctions between contexts in the development of affordable warmth policy e.g. devolved administrations	Procedural justice Distribution justice What capacities do actors have to employ specific policy formulation tools? Are there factors which may enable or constrain the availability of these capacities? How/where has this representation of the 'problem' been produced disseminated and defended?	You have described a range of interacting organisations, are there any differences / which of the differences that you described would you say were most significant?	Individual to interviewee
How are the people who use energy to heat and light their homes understood by organisations and institutions that develop policy	Recognition justice What concepts and categories are used? How could it be questioned, disrupted replaced or reproblematised? What practices and processes have led to this representation? Can / has the 'problem' be thought about differently?	What types of evidence do you use / see used to understand people who use energy to heat and light their homes?	Individual to interviewee

Table A6 Political context of energy market regulation for domestic consumers 2000 - 2016

This table lists in full the events that made up the political events included in the process tracing presented in Figure 4.1

Acts		
A1	Utilities Act (Anon 2000a)	
A2	Warms Homes and Energy Conservation Act (Anon 2000b)	
A3	Energy Act 2004 (Anon 2004)	
A4	Energy Act 2008 (Anon 2008)	
A5	Energy Act 2010 (Anon 2010)	
A6	Energy Act 2011 (Anon 2011)	
A7	Energy Act 2013 (Anon 2013)	
Elections		
E1	Election - Labour majority, 2001	
E2	Election - Labour majority, 2005	
E3	Election - Conservative / Liberal Democrat Coalition, 2010	
E4	Election - Conservative Majority, 2015	
Committee Reports		
C1	Gas Prices	(House of Commons Select Committee on Trade and Industry 2001)
C2	Fuel Poverty	(House of Commons Select Committee on Trade and Industry 2002)
C3	Debt and Disconnection	(House of Commons Select Committee on Trade and Industry 2005)
C4	Ofgem's Social Action Plan and Household Energy Efficiency	(National Audit Office 2004)
C5	UK Economic Regulators	(House of Lords Select Committee on Regulators 2007)
C6	Energy prices, fuel poverty and Ofgem	(House of Commons Select Committee on Business and Enterprise 2008)

C7	Pensioner Poverty	(House of Commons Select Committee on Work and Pensions 2008)
C8	Ofgem's Retail Market Review	(House of Commons Select Committee on Energy and Climate Change 2011)
C9	Consumer Engagement with Energy Markets	(House of Commons Select Committee on Energy and Climate Change 2012)
C10	Energy Prices, Profits and Poverty	(House of Commons Select Committee on Energy and Climate Change 2013)
C11	Energy price comparison websites	(House of Commons Select Committee on Energy and Climate Change 2015)

Table A7 Energy market regulatory activities in GB 2000 - 2016

This table lists in full the documents that made up the process tracing presented in Figure 4.1

Regulatory Publications	
Social Action Plan: Improving Social Obligations Proposals Document	(Ofgem 2000a)
The Social Action Plan	(Ofgem 2000b)
Review of domestic gas and electricity competition and supply price regulation	(Ofgem 2001b)
Making Markets work for customers - Vol I, II & III	(Ofgem 2003a, 2003b, 2003c)
Domestic Market Retail Market Report	(Ofgem 2004b)
Social Action Strategy, Ofgem	(Ofgem 2005e)
Energy Supply Probe Call for Evidence	(Ofgem 2008b)
Energy Supply Probe Initial Findings Report	(Ofgem 2008d)
Addressing Unfair Price Differentials	(Ofgem 2009g)
Energy Supply Probe Remedies	(Ofgem 2009f)
Addressing Undue Discrimination, Impact Assessment	(Ofgem 2009b)
Addressing undue discrimination	(Ofgem 2009a)
Debt and Disconnection Review	(Ofgem 2008a)
Review of Protection for Vulnerable Customers from Disconnection	(Ofgem 2009h)
Notification of modifications of standard licence condition 27.11	(Ofgem 2010c)
Retail Market Review	(Ofgem 2010f)
The Retail Market Review - Draft Impact Assessment for the updated domestic proposals	(Ofgem 2011j)
Retail Market Review Findings and initial proposals	(Ofgem 2011h)
The Standardised Element of Standard Tariffs under the Retail Market Review	(Ofgem 2012o)
The Retail Market Review - Updated Domestic Proposals	(Ofgem 2012k)
Draft domestic licence conditions for the Retail Market Review proposals	(Ofgem 2012e)
The Retail Market Review - Final Domestic Proposals	(Ofgem 2012i)

The Retail Market Review - Final Impact Assessment for domestic proposals	(Ofgem 2013j)
The Retail Market Review - Implementation of Simpler Tariff Choices and Clearer Information	(Ofgem 2013k)
Implementation of the domestic Standards of Conduct - decision to make licence modifications	(Ofgem 2013g)
Proposal for a new Consumer Vulnerability Strategy	(Ofgem 2012h)
Energy Affordability: helping develop Ofgem's Vulnerable Consumers Strategy	(Ofgem 2012f)
Consumer Vulnerability Strategy	(Ofgem 2013c)
State of the Market Report	(Ofgem, Office of Fair Trading and Competition and Markets Authority 2014)
Consultation on a proposal to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain	(Ofgem 2014a)
Issues Statement	(Competition and Markets Authority 2014)
Updated issues statement	(Competition and Markets Authority 2015b)
Provisional decision on remedies report	(Competition and Markets Authority 2016c)
Final Report	(Competition and Markets Authority 2016b)
The Energy Market Investigation (Database) Order 2016	(Competition and Markets Authority 2016d)
The Energy Market Investigation (Restricted Meters) Order 2016	(Competition and Markets Authority 2016e)
The Energy Market Investigation (Prepayment Charge Restriction) Order 2016	(Competition and Markets Authority 2016f)
Proposals to improve outcomes for prepayment customers	(Ofgem 2015i)
Prepayment meters installed under warrant: final proposals	(Ofgem 2016f)
The Future of Market Regulation	(Ofgem 2016j)
Ofgem's Regulatory Stances	(Ofgem 2016e)

Table A8 Organisation and Institution name changes 2000 to 2016

Between 2000 and 2016, organisations and institutions involved in regulatory policy formulation changed names despite maintaining a consistent role. I list these below for reference.

Government Department responsible for energy regulation

- Department of Trade and Industry (DTI) - 2000 - 2007
- Department for Business, Enterprise and Regulatory Reform (DBERR) - 2007 - 2008
- Department of Energy and Climate Change (DECC) - 2008 - 2016
- BEIS - 2016 to date

Consumer Advocate in energy markets

- Energywatch - 2000 - 2008
- Consumer Focus - 2008 - 2010
- Consumer Futures - 2010 - 2014
- Citizens Advice - 2014 to date

Industry body representing energy supply firms

- Energy Retailers Association (ERA) - 2003 - 2012
- Energy UK (EUK) - 2012 to date

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