

## **Ofgem's Procedure for Determining Disputes**

### **Introduction**

- 1 There are circumstances in which a dispute between an electricity supplier or distributor or a gas supplier or transporter and a consumer may be referred to the gas and Electricity Markets Authority for determination. These may arise under statute (particularly the Gas Act 1986 and the Electricity Act 1989) or under the provisions of licences.
- 2 This memorandum outlines the procedures that Ofgem will generally follow in such cases <sup>1</sup>. These procedures are in addition to any procedural requirements set out in the relevant Acts or licences.

### **Initial Steps**

- 3 Where a dispute arises, Ofgem will expect that the parties will seek to resolve it between themselves. They may also, in appropriate cases, seek the assistance of energywatch. If these efforts are unsuccessful, the matter may be referred to Ofgem.

### **Start of the Process**

- 4 Where a matter is referred to Ofgem that may lead to a determination, Ofgem will first consider if the matter is one which Ofgem may determine. Once Ofgem has decided that this is a matter in respect of which it is capable of making a determination, Ofgem start the procedure by explaining to all the parties the procedures that it proposes to follow. It is expected that this will usually be done by providing a copy of this note, together with any additional guidance which may be relevant to the particular type of dispute.
- 5 At the same time Ofgem will ensure that all the parties know the identity of the Ofgem official who will:
  - ◆ Be responsible for the conduct of the procedures (the 'case officer'), and
  - ◆ Make the final decision

These will never be the same people. If at any stage during the process, the identity of either official changes for any reason, Ofgem will inform all the parties as soon as is practical.

### **During the Process**

- 6 It is Ofgem's intention that each party should have full opportunity to put their cases and that the case put by each party should be fully exposed in writing to all other parties, subject to appropriate safeguards in respect of commercially confidential information.

---

<sup>1</sup> These procedures do not apply where the disputes relate to a licence contravention and may lead to enforcement action.

- 7 If any party wishes to provide confidential information, it should notify the case officer before doing so and explain why it is confidential. The case officer may require a non-confidential summary to be provided to the other party. In reaching its decision, Ofgem will consider the weight which it is appropriate to give to information on which any other party has not had an opportunity to comment.
- 8 Ofgem will invite each party in turn to provide to it a written submission setting out the relevant facts and reasons supporting that party's position. Ofgem may provide a guide as to be information which a party will need to provide to enable the matter to be decided. In connection disputes each party should complete the form in Appendix 1 and the Gas Transporter / Electricity Distributor should provide the technical information in Appendix 2. It is important that the parties only comment on the actual dispute. Ofgem will also indicate any information which it has already received, for example, from energywatch, which it would expect to take into account in reaching a decision. At the start of the process, the case officer will set a date by which written submissions must be received by Ofgem. The length of the period allowed for preparation of submissions will depend on a number of factors including the complexity of the matter and the extent to which the documentation already exists. Ofgem would not normally expect this period to exceed four weeks.
- 9 Ofgem will normally expect to copy its correspondence to one party to the other parties and for each party to copy any letter it writes to Ofgem to the other parties to the dispute. Ofgem may itself raise questions to the parties on matters arising from the responses received.
- 10 In the light of submissions and comments, the case officer will draw up a statement of the main facts of the case and each party's arguments. The parties will have an opportunity to comment on the summary of the main facts and Ofgem's summary of their own evidence. This is not intended to provide an opportunity to restart any dispute of facts or raise new arguments.

### **Oral Hearings**

- 11 While it is Ofgem's intention that the exchange of information leading to determinations should be largely written, any party to a matter to be the subject of a determination can, at its request, present its case in person to the decision maker. It is expected that any such hearing will normally take place only after the written process has been completed. Both parties will normally attend such meetings but, in appropriate cases, it may be directed that only one party may attend, for example for the purpose of putting confidential information before Ofgem. When both parties are present, it is not envisaged that the hearing should be formal and it will not be normal for there to be cross examination, although each party will be permitted to comment in brief on the other's representations. When only one party is present, Ofgem will disclose any new information which it receives at the hearing but which is not in fact confidential to the other party for comment.
- 12 The case officer will be responsible for setting time limits at all stages of the process. In connection disputes, the case officer will specify the proposed timetable in his

initial letter to the parties. He may, in exceptional circumstances, extend time limits that he has set. He has complete discretion as to the admissibility of submissions received late. It is therefore important that all parties provide information in a timely and accurate manner in support of their case.

- 12A In cases where no additional information is required and the matter is a domestic connections dispute, it is envisaged that the procedure will take no longer than two months from the time that Ofgem receives the complaint and determines that it has jurisdiction to deal with it. In more complex matters the case officer will keep the initial timetable under review and advise the parties of any necessary revisions to it.

### **The Decision**

- 13 The decision-maker will make his decision on the basis of the statement prepared by the case officer, the written submission of each party and any hearings which have been held. This decision and the reasons for it will be recorded in writing and the case officer will provide a copy to each party.
- 14 During the course of the process the decision-maker may obtain advice from Ofgem staff, including guidance from the Ofgem management committee. The fact that he has done so, and the advice given will not generally be made public, but if any material new points are raised, the parties will be invited to comment on them.

### **Public Register**

- 15 Ofgem is required to place on the public register maintained by it under the relevant Act a copy of certain types of decision and it is its normal practice to make all other decisions available to the public on request. The name and address of the customer will normally be omitted from the published version of the decision. If any party to a decision wishes any matter to be excluded from the publication, it should make representations to the case officer within fourteen days of the issue of the decision. After which it may be placed on the register or otherwise made publicly available in the form in which it was issued to the parties.

### **Other Disputes**

- 15 Ofgem may also be asked to determine other types of dispute, for example, between two licensees. Ofgem would generally expect to follow the procedures outlined above, so far as they are relevant, in determining such disputes and to advise the parties at the time the request for determination is made of any changes to that procedure.