



All stakeholders

*Promoting choice and value for
all gas and electricity customers*

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Dear Colleague

Update letter regarding Ofgem's review of its procedure for determining disputes

The purpose of this letter is to set out the Authority's decision to amend our procedure for determining disputes and provide an update on Ofgem's review. Ofgem hopes that, amongst other things, its amended procedure will streamline the process, assist parties and encourage them, wherever possible, to resolve matters amongst themselves.

In an open letter consultation dated 1 December 2009¹ ("the December open letter"), we set out some high level options and sought views on potential amendments to our current procedure. Following consideration of the consultation responses the Authority has decided that:

- oral hearings are to remain available to all parties;
- there are circumstances in which it may be appropriate for Ofgem to seek to recover some determination costs from parties. We would only consider recovering costs in circumstances where it is appropriate for Ofgem to do so. It would not be Ofgem's intention to recover costs from fuel poor or vulnerable customers and, in all cases affordability would be considered;
- we may name licensees in our published determinations unless there are valid reasons to retain the licensee's confidentiality. This will be considered on a case by case basis.

Following the Authority's decision that we may recover determination costs we intend to consult in September on the principles and approach we will apply.

Below we set out the rationale for these decisions including consideration of responses to the consultation. We also set out the further work we plan to do to assist parties looking to bring a matter to Ofgem for determination.

Background

¹ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=28&refer=Consumers/CI/ncamm>

There are certain circumstances where disputes between network licensees and their customers, can be referred to the Authority for determination². The Authority's determination powers are wide-ranging and sit across various legal instruments.

Last year we commenced a review of our current determination procedure³ since we believe there is scope to streamline the process and provide additional information to customers including how they can contribute to speeding up the process, where possible. We would also like to encourage parties to resolve matters among themselves, where possible.

This review also enables us to update the Guidance to reflect, amongst other things, changes in Ofgem's powers and other developments including the creation of the Energy Ombudsman and overhaul of companies' complaints handling processes under the Consumers, Estate Agents and Redress Act 2007.

As part of our review, in December 2009 we consulted the industry on a series of amendments to the current determination procedure. The proposals were to:

- limit 'oral hearings' (where the parties in dispute present their cases to Ofgem in person) to disputes where Ofgem considers an oral hearing is necessary to reach a decision;
- recover the costs associated with determining a dispute, where those costs exceed the level of costs Ofgem would usually expect to incur; and
- name the licensee in published determination decisions unless there are valid reasons to retain the licensee's confidentiality.

We received 15 responses to the Open Letter consultation from a range of industry participants⁴. The following provides a summary of responses received and our decision on each of the areas we consulted on.

Limiting oral hearings

There was overall consensus amongst respondents against our proposal to limit oral hearings; as a consequence we have decided to continue to give parties the right to request an oral hearing. Whilst we continue to consider that an oral hearing is not likely to be necessary to enable us to reach our decision in all cases, it remains an option for parties in any dispute. However, we expect that in all cases parties will inform us in writing of the information necessary to reach our decision.

Cost recovery

In the December 2009 consultation we set out proposals of cost recovery. We consider that there may be circumstances where using our ability to recover costs will better protect existing and future consumers, Ofgem's principal objective.

The majority of respondents understood Ofgem's preference to recover at least some costs from parties to a determination, although there was no consensus on whether this was or was not appropriate. There were divergent views on which costs should be recovered, and under what circumstances, as well as from which parties they should be recovered. No objections were raised on our proposal of charging for external technical advice in certain situations. Most respondents agreed on the need to provide clear guidance if we decided to move ahead with the cost recovery proposal.

² The Authority's determination is final.

³ A document approved by the Gas and Electricity Markets Authority. It sets out, at a very high level, the steps we follow in cases which require determinations. This document can be found here:

<http://www.ofgem.gov.uk/Consumers/CI/ncamm/Documents1/3866-ProcedureforDeterminingDisputes.pdf>

⁴ These responses can be found here:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=28&refer=Consumers/CI/ncamm>

The Authority has decided that it may be appropriate in certain circumstances to recover determination costs. We intend to consult further on cost recovery principles and will set out proposals and seek views on a number of issues, including:

- circumstances in which it would be appropriate to recover costs from parties
- basis on which costs will be calculated
- factors we will take into account before recovering costs

Naming licensees

In our December 2009 consultation we put forward our draft proposal to name licensees on Ofgem's public register unless there were valid reasons not to do so (including confidentiality). We did not, however, propose to publish the names of customers. We consider that publishing the names of licensees involved in determinations could encourage parties to seek to resolve disputes before they are sent to Ofgem for determination thereby providing a speedier resolution of the dispute for the parties.

A majority of respondents agreed with our proposal to name the licensee in published determinations. We have decided that licensees may be named in our published determinations, however any decision to publish would be considered on a case by case basis.

Further work

The review of our determinations procedure and the feedback we have received to date has highlighted that parties engaged in disputes may not be aware of the mechanisms that are available to them (and which we expect should be utilised before a dispute is referred to Ofgem). To address this, we intend that the updated determinations procedure document will, amongst other things, clarify that:

- the network companies have their own complaint procedures that are available to customers and which should be the first recourse in any dispute
- energy advisory services⁵ are available to assist domestic and small business customers, and
- the Energy Ombudsman⁶ can play a role in resolving certain disputes for domestic and small business customers.

To assist parties who are referring a matter to Ofgem, our updated determinations procedure document will aim to provide, amongst other things, more detailed information on:

- the general procedure we will intend to follow
- the information we will require from parties in dispute
- our expectations on the time it should take each party to provide us with their submissions
- Cost recovery principles

⁵ Consumer Direct and Consumer Focus offer advice on a wide range of consumer issues.

⁶ The Energy Ombudsman is a redress scheme approved by the Authority pursuant to the Consumer, Estate Agents and Redress Act (2007)

Way forward

We hope to issue our cost recovery consultation document by September, seeking views on the issues above. Following that, it is our intention to establish charging principles which will ultimately be included in our updated determinations procedure document. We expect to publish the updated procedure document later in the year.

If you have any questions concerning this update letter please contact Lia Santis at lia.santis@ofgem.gov.uk or on 02079011856.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Rachel Fletcher', is positioned above the typed name.

Rachel Fletcher
Partner, Distribution