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Dear Lia

CONSULTATION ON COST RECOVERY APPROACHES FOR DETERMINATIONS

I write in response to your consultation published in December and welcome the opportunity to comment.

We commented last year when Ofgem published its review of guidance for determining disputes and we supported the principle that there were limited circumstances where the recovery of costs would be justified. Our main concern was that the proposal to recover costs where a dispute involves a low income customer would discourage a customer from referring a dispute. We have the following comments on your new proposals on costs:

- We note that Ofgem will not now seek to recover costs where through no fault of either party estimated timelines and costs have been exceeded. However, we still have some concerns that the circumstances that could lead to recovery in paragraph 2.9 are one sided and inconsistent. You state that there could be recovery where a party “brings forward new and important evidence late in the process without justification”. It must always be open to any party in any quasi judicial proceedings to be able to bring forward new evidence and if any new evidence is “important” it must be justified by definition. Even if the new evidence is not accepted, it cannot be right that a party to proceedings should be penalised in costs for bringing forward evidence which prima facie might be justified.
- The point above is also of relevance to your comments in paragraph 2.12. We would suggest that the recovery of costs for any additional round of technical or legal external advice should only be where it was reasonable that the party to the dispute should have provided the new information in the initial and comment stages. It would be unreasonable to seek recovery due to Ofgem obtaining additional evidence as a result of evidence reasonably provided after the initial and comment stage.
- We have no objection to the proposed categories in paragraph 2.24 subject to the caveats outlined above.

- We would question the rate of £200 as detailed in paragraph 2.28. This seems high and suggests an average gross salary of about £48k for Ofgem staff in an information provision role.
- The standard fee proposed for a straightforward dispute of £3,500 is too high and the differential is too small between what could be a minor domestic determination involving a Guaranteed standards or domestic connection dispute and a highly complex dispute, commercial in nature, perhaps involving a number of parties. We note the proviso in paragraph 2.35 but perhaps there should be a similar one for a straightforward dispute where the true cost of the determination is less than £3,500.
- As you have stated quite openly that under no circumstances would you seek to recover costs from the fuel poor and/or vulnerable, we remain unclear from your comments whether you might seek to recover costs from a pensioner who maybe financially better off than a domestic customer. Equally, your comments could be interpreted as an invitation to the more vexatious complainant who is fuel poor or vulnerable to conduct their dispute as they like knowing they will not be penalised in costs.

I hope our comments will be duly considered.

Yours sincerely

Sarah Siddall
Head of Economic Regulation