

June 23, 2014

Dear Sir,

Consultation on our financial penalties and consumer redress policy statements

Please find Co-Operative Energy's response in respect of the above consultation below. We have structured our response by answering the questions that were raised in the consultation.

Co-Operative Energy is supportive of increasing transparency across the industry and we consider that Ofgem's proposals support this aim while also expediting settlement with regard to non-compliance.

We also agree with Ofgem's principles that the penalty for non-compliance should be reasonable in all circumstances of the case. We are not clear from the consultation as to how Ofgem calculates the detriment and gain, therefore for clarity it would be helpful if the guidance notes could expand upon this.

Question 1: Are these objectives appropriate?

We agree that it is inappropriate for companies regulated by Ofgem to receive any material benefit from contravention of the industry rules to which they are subject. We therefore also agree that any financial penalty levied should exceed the amount of the material benefit in order to disincentivise behaviour of this kind. However, it is necessary that both penalties and redress are targeted and proportionate.

Question 2: Is the proposed process for determining the amount of penalties and/or redress appropriate?

We agree with the spirit and principles of the proposed approach. However, from the Ofgem Workshop held on the 6th June, it is clear that industry would welcome further information in respect of how the Statement of Facts would work and provide the opportunity for industry and Ofgem to reach a common understanding of the detail of the non-compliance in advance of the detriment and gain being calculated.

Question 3: Do you agree with the proposed factors that may aggravate or mitigate the amount of a penalty or redress payment?

We agree that certain factors should be considered as aggravating in relation to the determination of any financial penalty. It seems reasonable that conduct likely to detrimentally affect consumer confidence in the energy market should fall within this category, as well as knowingly breaching the market rules in order to achieve financial benefit to the company involved. We would support the view that very minor contraventions without any financial detriment to consumers should be treated as lesser breaches with proportionate steps being taken in relation to enforcement.



Question 4: Do you agree with the proposed settlement percentage discounts in cases under the Gas Act or Electricity Act?

We agree that definite benefit can derive to consumers in the case that settlement is reached at an earlier stage and therefore support the proposed discounts. We also agree that this should only apply to the penal element of any financial penalty and not the benefit gained as a result of the breach as this would risk the creation of perverse incentives in relation to compliance.

Question 5: Do you agree with the proposed policy on determining who receives payments where consumer redress powers are used?

We consider that it is appropriate that parties are given the choice of contacting affected customers or asking customers who think they may have been affected to get in touch. A key factor will be the overall efficiency and cost of choosing one of these notification methods as difficulty may be experienced in tracing customers who have switched to another supplier should the breach have been ongoing for some time.

Question 6: Are there any other potential consumer redress requirements that we should specifically refer to in section 7 of the policy statement?

We believe that those already contained within the document are sufficient.

Question 7: Do you agree with the proposed approach to the treatment of detriment?

It seems reasonable that, if it is impossible or highly impracticable to compensate affected customers directly, parties should be allowed to make payments to categories of customers or to consumer funds as directed by Ofgem. This acts as a suitable proxy and ensures that those customers who need it are able to benefit from these payments.

Question 8: Should administrative costs be borne by the company in addition to any compensation or other payments that may be required?

This seems reasonable provided that these costs are proportionate to size of the benefit and taking into consideration the penalty aspect of any financial remedy required by Ofgem. Please see our answer to Question 5 above.

I trust that this information meets your requirements, please do not hesitate to contact Chris Hill (christian.hill@cooperativeenergy.coop) should you have any questions or require any further information.

Yours sincerely,

Steve Rowe

Head of Regulation and Compliance