

Andy MacFaul
Ofgem
9 Millbank
London
SW1P 3GE

23 June 2014

Dear Andy,

Consultation on financial penalties and consumer redress policy

Thank you for the opportunity to respond and comment upon the above consultation.

We strongly support the objectives that businesses should put energy customers first and act in line with their obligations and agree that companies should not benefit from any contravention or failure.

Whilst we broadly agree with the proposed approach we have two main areas of concern:

- a) the potential for double jeopardy. There is a potential risk that companies could be penalised twice using the proposed two element approach– first, through the penal element and second, through the detriment value. We believe that there is a significant risk that the second element would be overestimated for the customer's benefit effectively including a further penal element.
- b) the potential scale of penalties relative to the cost of providing the relevant obligation. The policy as drafted doesn't take any account of the cost of providing the relevant obligation in relation to the scale of any penalty for breach. Therefore, there is a risk that a disproportionate approach between penalties for a failure and the cost of delivering the relevant obligation associated with that penalty would disproportionately increase risk. This would lead to a necessity to cover that risk, which would drive extra costs for the regulated business. This, in turn, would drive the costs of delivering the obligation up unnecessarily without adding any additional value for the customers.

We obviously recognise that this factor shouldn't be a dominant consideration, however, it should be factored into the decision making on the levels of penalties and detriment.

Our responses to each of the detailed questions in the consultation are set out in the attached appendix.

Should you have any questions on this response, please do not hesitate to contact me. Our response can be regarded as non-confidential.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Parker', is positioned above a horizontal line.

Stephen Parker
Regulation Director

APPENDIX

Q.1 Are these objectives appropriate?

We strongly support Ofgem objectives that business should put energy consumers first and act in line with their obligations and agree that companies should not benefit from any contravention or failure.

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

We agree that Ofgem proposed two element penalty approach is reasonable. However, when using this approach there is a potential risk that companies could be penalised twice - not only through penal element, but also when applying recovery of the detriment suffered as it is usually not easy to find detriment value and we believe that this value could be overestimated for the customers benefit.

We also have concerns that the lack of proportionality between the price paid by a consumer for an individual aspect of service and any detriment they might suffer could potentially lead to a complete disproportionate approach between a penalties for a failure versus the level of allowance allowed for its provision. This would lead to a higher uncertainty and risk companies face which, in turn, needs to be covered. The cost to insure that risk could be significant in comparison to the price customer pays for the service. This would drive the costs of providing the service up unnecessarily without adding any additional value for the customer.

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

Yes we agree that discounts should be applied to penalties when companies demonstrate an effective culture of full compliance and penalties should be increased if companies are not able to demonstrate full compliance.

However, we think that Ofgem should apply much more weight on self-reporting element for mitigating the penalty, as this creates the right culture where Ofgem can avoid close monitoring and inspections of the companies.

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

We believe that the proposed discounts are too low and thus don't encourage the culture of early settlement.

Q.5 Do you agree with the proposed policy on determining who receives payments where customer redress powers are used?

Yes we agree

Q.6 Are there any other potential consumer redress requirements that we should specifically refer to in section7 of the policy statement?

No comments

Q.7 Do you agree with the proposed approach to the treatment of detriment?

Yes we agree

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

Since these costs could be significant they should be taken into account when considering the penal element. If these cost were not taken into account it would imply that the amount payable by a company is be made up of three elements: detriment value, penal element and administrative costs.