

# **Response to Ofgem's consultation on financial penalties and consumer redress policy**

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# Financial penalties and consumer redress policy

## Ombudsman Services' consultation response

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## 1 Summary

### 1.1 About Ombudsman Services

The Ombudsman Service Ltd (Ombudsman Services) is a company limited by guarantee that provides ombudsman services for the energy, telecommunications, property and copyright licensing sectors, by appointment or approval from the relevant regulators. It was appointed by the Department for Energy and Climate Change (DECC) to be the ombudsman and investigation service for the Green Deal. We provide dispute resolution and redress to domestic consumers and micro and small businesses. Established in 2002, Ombudsman Services now has around 8,500 participating companies and last year we resolved over 28,600 complaints. The company employs over 300 people and has a turnover of just over £11m.

Ombudsman Services complaints resolution service is free to consumers and costs the public purse nothing; it is paid for by the participating companies under our jurisdiction by a combination of subscription and case fee. The participating companies do not and should not exercise financial control over the company. Ombudsman Services' governance ensures that we are independent from the companies that fall under our jurisdiction. The more complaints there are about a company, the more the company pays, ensuring an incentive for the company to improve their customer service.

To help level the playing field between consumers and companies, we have a contact centre which provides information and helps those who have difficulty in making a

complaint. We achieve proportionality by providing alternative dispute resolution through different processes, from early resolution to Ombudsman Services decision.

## **1.2 Ombudsman Services views**

Ombudsman Services welcomes the opportunity to comment on Ofgem's financial penalties and consumer redress policy.

## **2 General response to the consultation**

### **2.1 Consistent use of language**

In order to reduce potential confusion in the minds of the consumer and promote greater accessibility, it may be of benefit if the terminology used in Ofgem's financial penalties and consumer redress policy mirrors that used by Ombudsman Services. While there may be legal requirements that certain terms are used, I feel that it is important that complainants are able to use and understand both redress schemes easily and a common language would help achieve this. For example, Ombudsman Services uses the term award rather than "compensation" as compensation suggests a punitive element to an amount the complainant is due. As Ofgem is aware, it is not the function of the ombudsman to penalise companies (that is rightly the function of the regulator), rather we are there in order to put the consumer back to a position as if nothing had gone wrong in the first place.

### **2.2 Double award**

It is important to ensure that the companies are not subject to double awards or if they are then appropriate arrangements are put in place to ensure that the disadvantage that they might suffer is limited.

There may be occasions where companies are unable to identify consumers who are eligible to receive redress. Ofgem's Financial penalties and consumer redress policy can require companies to calculate the amount of "loss" consumers might have been eligible to receive and it then be allocated to other consumer groups, for example to address fuel poverty.

While Ombudsman Services supports this approach, there is a risk that, given the publicity of a case, individual consumers may come to Ombudsman Services to have their specific complaints investigated. In this instance, we may find that a consumer has a legitimate complaint that can be evidenced and we are able to make an award. In this instance, the company will have been required to make a double award for the same problem; one to the individual complainant and one to another group of consumers. It is Ombudsman Services' view that arrangements are put in place so that companies are not unduly penalised and required to make double awards.

### **2.3 The right to come to Ombudsman Services**

There may be instances where an individual consumer has received an award based on an assessment carried out by a company. The amount the consumer received however is based on an average as it is more cost effective for the company undertake the assessment on this basis. It is Ombudsman Services' view that individual consumers should retain the right of having their cases subsequently investigated by Ombudsman Services as their individual loss could be greater than the award they have received. In the interest of fairness, an ombudsman will, when making an award, have in mind what the consumer has already received so that companies are not unduly penalised.

### **2.4 Consistent jurisdictions**

As a result of Ofgem's Energy Market Review, Ombudsman Services' jurisdiction was extended to also include small businesses, i.e. those companies that typically spend up to £10,000 on energy per year. In order to again ensure consistency of jurisdiction and avoid confusion in the mind of the consumer, Ombudsman Services recommends that the proposed consumer redress policy adopt a similar jurisdiction.

### **2.5 Conclusion**

I hope the comments contained in this response are helpful, however if you require any clarification please contact me.

**Lewis Shand Smith**  
**Chief Ombudsman**

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