

# Approval criteria for redress schemes in the energy sector

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These criteria set out the requirements that we must be satisfied a body meets in order to appoint it to administer redress schemes in the energy sector. They incorporate the requirements set out in the Consumers, Estate Agents and Redress Act 2007, and in the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ('ADR Regulations').

An ADR applicant may apply to the Authority to become an ADR entity. In the event of a change to the information which an ADR entity has supplied to the Authority, the ADR entity must, without undue delay, provide written notification of the change.

## Services offered by the body

- 1.1. The Authority must be satisfied that the body—
  - a) offers alternative dispute resolution services in relation to a domestic dispute or crossborder dispute brought by a consumer against a trader;
  - b) has the power to resolve disputes by requiring that regulated providers pay compensation, give an apology and/or explanation or take some other form of action which is considered advantageous to the complainant;
  - c) is able to consider all types of complaint<sup>1</sup> as indicated in the Gas and Electricity Regulated Providers Redress Scheme Order 2008;<sup>2</sup>
  - d) does not offer alternative dispute resolution services in relation to a domestic or crossborder dispute in circumstances where an official responsible for the dispute is either employed or remunerated directly by a trader who is a party to the dispute.

## Access to the redress scheme

- 2.1. It is essential that the scheme is, and is seen to be, easily accessible to consumers. Several factors are capable of impeding access, including a lack of awareness of the scheme, processes and procedures that prevent timely access to the scheme and its ease of use (or perceived ease of use) across all groups of consumer, including consumers in vulnerable situations.
- 2.2. In order to ensure that these requirements are met, the Authority must be satisfied that the body—

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<sup>1</sup> Where the body deals with domestic consumer complaints only then it must be able to consider any consumer complaint within the meaning of s2(1) (a) of the Order. Where the body deals with domestic consumer and microbusiness complaints then it must be able to consider any consumer complaint within the meaning of s2(1)(a) and (b) of the Order.

<sup>2</sup> <http://www.legislation.gov.uk/all?title=The%20Gas%20and%20Electricity%20Regulated%20Providers%20%28Redress%20Scheme%29>

- a) takes appropriate steps to ensure consumer awareness of the scheme, working with third parties as appropriate and accommodating consumers' varying circumstances;
- b) periodically analyses the profile of complainants to inform its work to raise awareness of the scheme;
- c) ensures that the scheme is available free of charge to consumers;
- d) maintains procedures and processes for raising a complaint with the scheme that are easy to understand and use and are not overly bureaucratic;
- e) maintains an up-to-date website which provides the parties to a domestic dispute or crossborder dispute with information regarding the alternative dispute resolution procedure operated by the body;
- f) provides the information referred to in sub-paragraph (e) to a party on a durable medium, if a party requests it;
- g) maintains an easy to understand guide explaining what the consumer needs to do to raise a complaint with the scheme and what the scheme's processes are for investigating a complaint must be provided to consumers contacting the scheme;
- h) ensures that its website enables a consumer to file an initial complaint submission and any necessary supporting documents online;
- i) permits the consumer to file an initial complaint submission by post, if the consumer wishes;
- j) enables the consumer to progress their complaint via a range of methods, including telephone, email and post;
- k) enables the exchange of information between the parties via electronic means or, if a party wishes, by post;
- l) ensures that the cost to the consumer of accessing the scheme, such as the cost of making a call, is minimised;
- m) provides a wide range of translation services for those consumers that do not speak English as their first language, including a Welsh Language Service and additional services for those that are hearing or visually impaired;
- n) adopts processes that allow for additional help in accessing the scheme to be given to those consumers that need it. For example, this will include allowing persons to act on behalf of the relevant consumer;
- o) offers to complete any forms that are necessary in order for the scheme to investigate the complaint (excluding any signatures that are required to give staff the authority to proceed with the investigation);
- p) accepts disputes covered by Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes.<sup>3</sup>

### **Expertise, Independence and Impartiality**

- 3.1. Independence means that the approved redress scheme must be, and be seen to be, independent from those whose disputes it is resolving, i.e. both consumers and the regulated providers. This is essential to ensure that consumers and industry have confidence in the scheme, it is seen to be credible and that decisions are taken without bias.

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<sup>3</sup> OJ No L 165 18.6.2013 p1.

## Approval criteria for redress schemes in the energy sector

- 3.2. Independence does not mean that the redress scheme cannot be appointed or chosen by the regulated provider or that the regulated provider should not pay for the redress scheme. It means that there must be sufficient safeguards in place to demonstrate impartiality.
- 3.3. In order to ensure that these requirements are met, the Authority must be satisfied that the body—
- a) ensures that officials possess a general understanding of the law and energy regulation, and the necessary knowledge and skills relating to the out-of-court or judicial resolution of energy disputes, to be able to carry out his or her functions competently;
  - b) ensures that the person responsible for the scheme alone has the power to decide whether or not a complaint is within the scheme's jurisdiction;
  - c) appoints each official for a term of office of sufficient duration to ensure the independence of that person's actions and provides that no official can be relieved of his or her duties without just cause;
  - d) ensures that no official discharges his or her duties in a way that is biased as regards a party to a dispute, or the representative of a party;
  - e) remunerates an official in a way that is not linked to the outcome of the alternative dispute resolution procedure;
  - f) where it appoints more than one official, ensures that an official, without undue delay, discloses to the body a circumstance that may, or may be seen to—
    - (i) affect the official's independence or impartiality; or
    - (ii) give rise to a conflict of interest with a party to the dispute which the official is asked to resolve;
  - g) ensures that the obligation to disclose a conflict of interest is a continuing obligation throughout the alternative dispute resolution procedure;
  - h) ensures that in circumstances where its officials are employed or remunerated exclusively by a professional organisation or business association, the body has a ringfenced budget at its disposal which is sufficient to enable it to carry out its functions as described herein;
  - i) reports to a body or person independent of those subject to investigation (this does not exclude their minority representation on that body). The body or person must also be responsible for safeguarding the independence of the person responsible for the scheme;
  - j) maintains a majority of independent members on any Body or Council which appoints the person responsible for the scheme;
  - k) ensures that any terms of reference for a scheme, or changes to the terms of reference, are agreed by a body or person independent of those subject to investigation (this does not exclude their minority representation on that body);
  - l) is governed such that those appointing or terminating the appointment of the person responsible for the scheme must be—
    - (i) independent of companies that are subject to investigation (this does not exclude their minority representation on the body which is authorised to appoint or terminate); and
    - (ii) employed for a limited tenure;
  - m) ensures that the governance arrangements and fee structure of the scheme shall not have a disproportionate effect on any particular group of members;

- n) makes provision for the person responsible for the scheme to reallocate the case fee and compensation to another scheme member, if as a result of the decision of the person responsible for scheme fault lies with that other scheme member.

### **Conflict of interests procedure**

- 4.1. The Authority must be satisfied that the body has in place the following procedure in the event that an official declares or is discovered to have a conflict of interest in relation to a domestic dispute or cross-border dispute—
  - a) where possible, the official is replaced by another official to handle the particular dispute;
  - b) if the official cannot be replaced by another official—
    - (i) the official must refrain from conducting the alternative dispute resolution procedure, and
    - (ii) the body must, where possible, propose to the parties that they submit the dispute to another ADR entity which is competent to deal with it;
  - c) if the dispute cannot be transferred to another ADR entity, the body—
    - (i) must inform the parties to the dispute of the circumstances of the conflict of interest,
    - (ii) must inform the parties to the dispute that they have the right to object to the conflicted person continuing to handle the dispute, and
    - (iii) can only continue to deal with the dispute if no party to the dispute objects.

### **Transparency**

- 5.1. Demonstrating that a redress scheme is publicly accountable is an important step in ensuring that consumers have confidence in the decision-making processes of the scheme. To achieve this it is important that the scheme is transparent about all aspects of its operations, including its decisions and any statistical information that informs the public about the performance of the scheme. The scheme must also inform relevant organisations of the generic and systemic issues that it has identified.
- 5.2. Reports and external documents must be easily understood by their target audience, including regulated providers, consumers, regulators and the general public.
- 5.3. In order to ensure that these requirements are met, the Authority must be satisfied that the body makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium—
  - a) its contact details, including postal address, telephone number and e-mail address;

- b) a statement that it has been approved as an ADR entity by the Authority once this approval has been granted;
- c) its officials, jurisdiction, powers, the method of their appointment and the duration of their appointment;
- d) the name of any network of bodies which facilitates cross-border alternative dispute resolution of which it is a member;
- e) the type of domestic disputes and cross-border disputes which it is competent to deal with, including any financial thresholds which apply;
- f) the procedural rules of the alternative dispute resolution procedure operated by it and the grounds on which it can refuse to deal with a given dispute in accordance with paragraph 9;
- g) the languages in which it is prepared to receive an initial complaint submission, which must include English and Welsh as a minimum;
- h) the languages in which its alternative dispute resolution procedure can be conducted, which must include English and Welsh as a minimum;
- i) the principles the body applies, and the main considerations the body takes into account, when seeking to resolve a dispute;
- j) the preliminary requirements, if any, that a party to a dispute needs to have met before the alternative dispute resolution procedure can commence;
- k) a statement as to whether or not a party to the dispute can withdraw from the alternative dispute resolution procedure once it has commenced;
- l) the costs, if any, to be borne by a party, including the rules, if any, on costs awarded by the body at the end of the alternative dispute resolution procedure;
- m) the average length of each alternative dispute resolution procedure handled by the body;
- n) the legal effect of the outcome of the dispute resolution process, including whether the outcome is enforceable and the penalties for non-compliance with the outcome, if any;
- o) a statement as to whether or not alternative dispute resolution procedures operated by it can be conducted by oral or written means (or both);
- p) the annual activity report required to be prepared under regulation 11(2) of the ADR Regulations, which should also include information about-
  - (i) the scheme's decisions, including the nature of the complaint and the outcome; and
  - (ii) consumers' satisfaction with the scheme;
- q) the activity report required to be prepared every two years under clause 11(3) of the ADR Regulations.

## **Effectiveness**

- 6.1. In order for a dispute procedure to be effective, it has to be prompt, cost effective, fair, impartial and allow both parties to present their views. All representations, whether general enquiries or cases, must be dealt with on a fair and equitable basis. The scheme's dispute procedures and processes must facilitate the achievement of this objective.
- 6.2. Effectiveness also relies on the scheme having sufficient scope in terms of the type of complaint it can consider, the range of remedies it can require and its ability to enforce those remedies.

- 6.3. In order to ensure that these requirements are met, the Authority must be satisfied that the body—
- a) ensures that the scheme is adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the Ombudsman to function impartially, efficiently and appropriately. In ensuring this, amongst other actions, policies and processes as appropriate, best-practice forecasting methodologies and processes must be used to achieve, so far as reasonably practicable, accurate estimates of staffing and funding requirements;
  - b) establishes objective targets for reaching decisions and dealing with enquiries against which it and others can assess its performance and put in place arrangements for assessing its performance against these targets;
  - c) carries out periodic quality assurance monitoring;
  - d) establishes a set of procedures for enforcing its decisions and the scheme's rules;
  - e) ensures that its alternative dispute resolution procedure is available and easily accessible to both parties irrespective of where they are located including by electronic means and non-electronic means;
  - f) ensures that the parties to a dispute are not obliged to obtain independent advice or be represented or assisted by a third party although they may choose to do so;
  - g) notifies the parties to a dispute as soon as it has received all the documents containing the relevant information relating to the dispute constituting the complete complaint file;
  - h) effectively signposts a consumer to alternative organisations or sources of advice if a complaint is outside its remit;
  - i) notifies the parties of the outcome of the alternative dispute resolution procedure within a period of 90 days from the date on which the body has received the complete complaint file except that, in the case of a highly complex dispute, the body may extend this period but must inform the parties of this extension and the expected length of time that it will need to conclude the alternative dispute resolution procedure;
  - j) requires regulated providers to have proper and effective internal complaint handling procedures;
  - k) identifies issues in individual regulated providers and makes recommendations to improve complaints handling, reporting these recommendations to Ofgem where appropriate;
  - l) recommends changes to regulated providers' processes and/or policies where systemic failures are identified in order to promote improved service. This must include a dedicated referral process for informing the Authority and Citizens Advice that recommendations have been made;
  - m) maintains procedures to identify a potential breach of regulatory requirements and systemic problems within the industry and refer these to Ofgem (to determine whether or not there has been a breach);
  - n) regularly collects information regarding trends in complaints, company performance and scheme performance, and reports this information to the Authority and publishes this information on its website;
  - o) publishes information about consumers' satisfaction with the scheme;
  - p) notifies the Authority about any changes to the scheme (including changes to its rules or procedures, terms of reference or governance arrangements)

- before the end of the period of 14 days beginning with the day on which the change is made. Citizens Advice must also be informed of the changes;
- q) provides information requested by the Authority or Citizens Advice where the information is required to assess the performance of the redress scheme, its ongoing compliance with the criteria it has been approved against or the performance of regulated providers;
  - r) enters into agreements such as a Memorandum of Understanding or similar with other organisations as appropriate;
  - s) establishes procedures to consider and resolve complaints by consumers or regulated providers about the service provided by the scheme, and the final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved.

## **Fairness**

### 7.1. The Authority must be satisfied that the body—

- a) ensures that any deadlines for bringing a complaint to the redress scheme must be reasonable and allow for flexibility taking into account the circumstances of the case and the complainant, and do not unnecessarily limit access to the scheme;
- b) allows a regulated provider a reasonable period of time to attempt to resolve the complaint. We consider that 8 weeks is an appropriate maximum for regulated providers to resolve complaints;
- c) ensures that during the alternative dispute resolution procedure the parties may, within a reasonable period of time, express their points of view;
- d) provides a party to a dispute within a reasonable period of time, upon request, with the arguments, evidence, documents and facts put forward by the other party to the dispute, including a statement made, or opinion given, by an expert;
- e) ensures that the parties may, within a reasonable period of time, comment on the information and documents provided under paragraph (d);
- f) makes decisions that are based on what is fair in all the circumstances, having regard to principles of law, good practice and any inequitable conduct or maladministration. This must also include having regard to any regulatory requirements and codes of practice. All evidence must be clearly documented and analysed by the body. Natural justice and fair procedure must be observed, including appropriate opportunity to comment on facts, conclusions or outcomes. Conclusions must be evidence based and decisions and recommendations must flow clearly from the analysis;
- g) makes decisions which take account of the nature of the issue and the effect it has had on the complainant. Redress must take into account of any maladministration that has occurred and take account of the hardship or injustice suffered as a result. Proportionality is key, whereby the process and resolution is appropriate to the complaint;
- h) informs the parties that they are not obliged to retain a legal advisor, but that they may seek independent advice or be represented or assisted by a third party at any stage of the alternative dispute resolution procedure;

## Approval criteria for redress schemes in the energy sector

- i) notifies the parties of the outcome of the alternative dispute resolution procedure on a durable medium and gives the parties a statement of the grounds on which the outcome is based.
- 7.2. In relation to an alternative dispute resolution procedure which aims at resolving a dispute by proposing a solution, the body ensures that the consumer—
- a) has the possibility of withdrawing from the alternative dispute resolution procedure at any stage if they are dissatisfied with the performance or operation of the alternative dispute resolution procedure;
  - b) before the alternative dispute resolution procedure commences, is informed of their right to withdraw from the alternative dispute resolution procedure at any stage;
  - c) is informed, before agreeing to or following the proposed solution—
    - (i) that they have a choice as to whether or not to agree to, or follow, the proposed solution, making it clear to the consumer that the scheme's decisions are binding on the regulated provider but not on the complainant;
    - (ii) that their participation in the alternative dispute resolution procedure does not preclude the possibility of them seeking redress through court proceedings;
    - (iii) that the proposed solution may be different from an outcome determined by a court applying legal rules; and
    - (iv) of the legal effect of agreeing to, or following the proposed solution;
  - d) before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.

### Legality

- 8.1. In relation to an alternative dispute resolution procedure which aims at resolving a dispute by imposing a solution on the consumer, the body ensures that—
- a) in a situation where there is no conflict of laws, the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by agreement by virtue of any enactment;
  - b) in a situation involving a conflict of laws—
    - (i) where the law applicable to the sales contract or service contract is determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008 on the law applicable to contractual obligations<sup>4</sup> the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the law of the member State in which the consumer is habitually resident;
    - (ii) where the law applicable to the sales contract or service contract is determined in accordance with Article 5(1) to (3) of the Rome

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<sup>4</sup> OJ No L 177 4.7.2008 p6.



Convention of 19 June 1980 on the law applicable to contractual obligations<sup>5</sup> the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the mandatory rules of the law of the member State in which the consumer is habitually resident.

- 8.2. For the purposes of paragraph 11 “habitual residence” is to be determined in accordance with Regulation (EC) No 593/2008.<sup>6</sup>

### **Grounds to refuse to deal with a dispute**

- 9.1. The body may only refuse to deal with a domestic dispute or a cross-border dispute which it is competent to deal with on one of the following grounds—
- a) prior to submitting the complaint to the body, the consumer has not attempted to contact the trader concerned in order to discuss the consumer’s complaint and sought, as a first step, to resolve the matter directly with the trader;
  - b) the dispute is frivolous or vexatious;
  - c) the dispute is being, or has been previously, considered by another ADR entity or by a court;
  - d) the consumer has not submitted the complaint to the body within the time period specified by the body, provided that such time period is not less than 12 months from the date upon which the trader has given notice to the consumer that the trader is unable to resolve the complaint with the consumer. It may be appropriate to extend this time period taking into account the circumstances of the case and the consumer and not unreasonably limiting access to the scheme;
  - e) dealing with such a type of dispute would seriously impair the effective operation of the body.
- 9.2. The body ensures that its policy regarding when it will refuse to deal with a dispute does not significantly impair consumers’ access to its alternative dispute resolution procedures.
- 9.3. Subject to paragraph 9.4, where a body refuses to deal with a dispute, it must, within three weeks of the date upon which it received the complaint file, inform both parties and provide a reasoned explanation of the grounds for not considering the dispute.
- 9.4. Where following the expiry of the period referred to in paragraph 9.3, it appears to the body that one of the parties has sought to mislead the body as regards the existence or non-existence of one of the grounds for it to decline to deal with a dispute, the body may immediately decline to deal further with the dispute.

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<sup>5</sup> OJ No L 266 9.10.1980 p1.

<sup>6</sup> OJ No L 177 4.7.2008 p6.