

Response to Ofgem consultation: Allocation of voluntary redress payments in the context of enforcement cases

ALEO West Midlands are the West Midlands branch of the national organisation, recently renamed, the Association of Local Energy Officers (previously CAN). As an organisation we share information and best practice on how to help the people of England with all of their energy needs. We welcome the opportunity to comment on Ofgem's voluntary redress consultation 2016.

ALEO West Midlands have provided a collective response to the voluntary redress consultation. This group includes 9 local authority responses, 2 housing association responses and 2 third sector responses.

1) General comments

ALEO welcomes this consultation. It presents an opportunity to make the allocation of voluntary redress payments more transparent and equitable.

The existing allocation mechanism requires improvements. Other than where they were required to compensate their customers directly affected by their wrongdoing, the energy companies have been allowed considerable freedom to decide who to allocate funding to under voluntary redress. At a time when their wrongdoing has attracted negative publicity, it has suited them to mitigate this with the positive publicity of allocating funding to charities.

There has been a lack of transparency about how funds which would otherwise go to the public purse have been allocated, and why certain charitable organisations have been given preference over others. There also doesn't seem to have been any scrutiny of the outcomes and outputs of allocation decisions, or if there has, the results haven't been shared.

Disappointingly few local authorities have so far been able to benefit from voluntary redress funding, because of the preference of energy companies to allocate it to charities. Local authorities have a great deal to offer in terms of supporting vulnerable energy consumers, whether it be through providing affordable warmth advice and information or through improving the energy efficiency of vulnerable consumers' homes. Many excellent affordable warmth projects have been carried out by local authorities, but the increasing challenge they face is that there is inadequate funding available.

It is hoped that the new proposals will offer new project funding opportunities for local authorities. However, the consultation document is not clear at all about whether local authorities can receive any funding under the new proposals. Local authorities are not specifically mentioned anywhere. This is a major concern.

There are ambiguities throughout the document – in some places the description of the intended beneficiaries is limited to 'charities', whilst in other places the description 'charities, trusts and organisations that help energy consumers' is used.

This latter description might possibly include local authorities, but then again it might not.

As ALEO we feel that it would be prudent to include local authorities within this. Ofgem's intention to introduce open bidding for voluntary redress funding is a very positive move, and local authorities would be pleased to be able to compete on a level playing field alongside other interested organisations.

2) Responses to questions

Chapter 2: What we want to achieve

Question 1: Do you agree with our objectives for the allocation of voluntary redress? If not, please explain why.

The consultation document does not provide a precise definition of which organisations will be able to receive voluntary redress funding. There are ambiguities throughout the document about this.

In section 2.4 for instance, Ofgem says that it wishes to deliver the primary objective stated in section 2.3 by 'continuing to target charities, trusts and organisations that support energy consumers', but then says that this will be achieved by 'ensuring allocation decisions are made by experts who are well placed to identify and assess charitable options and select those that will deliver maximum benefit'.

As stated in the general comments above, local authorities should be given equal access to voluntary redress funding. Disappointingly there is not one single reference to local authorities throughout the entire document.

The objectives are supported if local authorities will be able to contribute to fulfilling them. They are not supported if local authorities are to be excluded.

Question 2: Are there any additional objectives or criteria we should consider when making a decision on our forward approach to voluntary redress? Are there things our approach should definitely include or absolutely avoid?

The criteria need to explicitly recognise that local authorities can bid for voluntary redress funding alongside other interested organisations.

The approach to voluntary redress should also:

- Give equal priority for funding to improve the energy efficiency of vulnerable consumers' homes. Whilst the provision of advice and information should also be supported, funding for insulation and heating measures would help to offset the reductions made under the Energy Company Obligation.
- Ensure that information obtained through monitoring the delivery and value for money of funded projects is shared widely.
- Include controls to manage how funding might be passed to subsidiary or associated organisations.

Chapter 4: Overview of options

Question 3: What are your views on ‘Option 1: Current process with enhanced principles’? Are there any other advantages, disadvantages, risks or costs relating to this option that we should consider?

The current process with enhanced principles is not supported because it still leaves the decision about who to allocate funding to with the energy company. The experience of voluntary redress to date shows that this has not worked effectively. Local authorities have been particularly disadvantaged by the decisions made by energy companies and this should not be allowed to continue.

As with earlier parts of the document, the ambiguous descriptions used in Chapter 4 mean it is not clear whether local authorities would even be considered for voluntary redress funding under Option 1. For example, one of the principles is that ‘the number of charitable recipients should be proportionate to the size of the penalty’, whilst the description of the open bidding principle says that the process will be ‘accessible to applications from all suitable charities, trusts and organisations that help energy consumers’.

Question 4: What are your views on the possible additional principles outlined in ‘Option 1: Current process with enhanced principles’? Are there further additional principles that would help meet our objectives?

Option 1 could only be supported if the following additional principle was applied:

The energy company will give equal consideration to bids submitted by local authorities, and will provide explicit evidence to Ofgem and all bidders to clearly justify the decision(s) made to allocate funding to a particular organisation in preference to others.

Question 5: What are your views on ‘Option 2: Responsibility given to a third party with appropriate expertise’? Are there any other advantages, disadvantages, risks or costs relating to this option that we should consider?

Option 2 is strongly favoured, subject to local authorities being able to participate in all open bidding processes, and subject to local authority bids being given equal consideration by the third party and Ofgem.

It is preferred that the third party should assess the bids submitted and then propose funding allocations to Ofgem, with the final decision being made by Ofgem.

Bids should be invited on a case-by-case basis rather than on a periodic basis. This will allow prospective bidders to judge on each individual occasion whether they are in a position to submit a bid, and to tailor their bid to the nature of the breach.

Question 6: How should the costs of the third party associated with allocating redress be funded?

The costs should be covered through investment returns and interest earned, supplemented by payments from the energy companies that have been investigated.

Question 7: Should the company that made the redress payment have an input into the approval of recipients under this option?

No, the energy companies should definitely not have any influence over the choice of recipient. The concern expressed in the document that 'companies under investigation may not volunteer to make redress payments as they would have no control over where the money goes', is unwarranted. In preference to simply paying money to HM Treasury, the energy companies will still want to be seen to be supporting good causes, even though they won't be able to choose the organisations involved.

Question 8: How can we ensure that smaller potential recipients can bid and are not disadvantaged compared to larger potential recipients?

One approach would be to break down a funding allocation into separate 'pots' of money, with each pot having a different maximum amount that can be awarded. For instance, a funding allocation of £5m could consist of Pot 1: maximum £1m to one successful bidder, Pot 2: maximum £500k to each of four successful bidders, Pot 3: maximum £100k to each of ten successful bidders, Pot 4: maximum £50k to each of twenty successful bidders.

The larger potential recipients would be more inclined to bid for the larger value pots, leaving the smaller value pots for smaller organisations to bid for.

Question 9: What are your views on this 'Variation on Option 2 – Voluntary redress payments go to a charitable trust set up by Ofgem'? Are there any other advantages, disadvantages, risks or costs relating to this option that we should consider, particularly in relation to the DAF provider model set out above?

It is agreed that using an existing third party rather than establishing a new charitable trust has greater advantages and fewer limitations.

Question 10: How should the costs of running a charitable trust set up by Ofgem be funded?

If a trust were to be established, the costs would have to be either met by Ofgem, the energy companies, or by using money that would otherwise be allocated to assist vulnerable customers. Each of these options is likely to be unpopular.

Chapter 5: An additional consideration

Question 11: What are your views of the idea of using part of voluntary redress payments to support specific schemes? What are the advantages, disadvantages, risks or costs relating to this idea? What existing schemes could be considered under this approach?

This idea is not supported. It will potentially replicate one of the worst features of the current approach to voluntary redress, whereby certain organisations have been seen to be favoured in preference to others. Funding should be allocated based on fair and open competition in all cases.

Given the inherent unpredictability of voluntary redress funding, maintaining continuous funding support for a specific scheme might be difficult.

Looking at the example given of DECC's Big Energy Saving Network, this should continue to be supported by DECC rather than substituting voluntary redress funding.

Chapter 6: Overall view

Question 12: Which of the options in this consultation do you think should be used and why?

Option 2 should be used. The open bidding process will be much fairer than the existing approach, provided that:

- Local authorities are allowed to participate and are given equal consideration by the third party and Ofgem.
- Energy companies are allowed no influence over the allocation decisions.
- When allocation decisions are made, unsuccessful bidders can clearly understand the reasons why other bids were preferred.
- The allocations are not prioritised based on the size of the match funding that an organisation can offer. Many organisations with good project proposals are unable to find match funding – particularly local authorities whose budgets have been dramatically reduced.

Question 13: Should any other options be considered? If so, please provide an outline explanation of your suggested alternative option(s). Please also outline any associated benefits and costs with the alternative option(s).

No other options are suggested.