

Regulatory Affairs

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By email to: redress@ofgem.gov.uk

Dear Kieran

Consultation on Ofgem's proposed approach to the allocation of voluntary redress payments in the context of enforcement cases

This is the British Gas response. Our answers to the consultation questions are attached but there are a number of specific points we would like to make.

- We agree with Ofgem that the current process is working well.
- While the benefits of allocating redress through established recipients under the current scheme are clear, the case for moving away from this proven approach is unclear. We believe that a more detailed explanation of why change is needed in this area is required.
- Ofgem should set out the benefits of the proposed change and demonstrate how they outweigh the costs. The funding arrangements during a prolonged period of no redress payments being due, under Option 2, need to be explored further.
- We are unconvinced that a new model, such as the one favoured by Ofgem under Option 2, would deliver better customer outcomes. Ofgem's primary objective can be achieved using the current process.
- We broadly agree with most of the additional principles put forward by Ofgem to enhance the current process (Option 1). However, we do not support the following principle:
 - *the allocation of voluntary redress payments to charities or trusts that were established by the company under investigation and/or whose name contains a reference to that company should be precluded*
- We have developed a number of programmes through our Energy Trust (which has its own independent branding and logo) which is now an established vehicle for delivering demonstrable benefits to energy customers. On-going learning from these

projects enables us to continually improve the support offered to energy customers. The best approach to allocating redress to customers affected by any given enforcement action will vary from case to case. It appears arbitrary to introduce a principle prohibiting allocation through an established trust in the absence of any evidence suggesting such a route to delivering redress is detrimental to customers. Our strong preference is to continue to be able to offer our Trust as a proven vehicle for allocating any future redress to customers.

We expand on these points further in our answers to the questions in the consultation document.

I trust that our comments are helpful. Please contact me on 07789 579153 (John.Miller@britishgas.co.uk) if you have any questions.

Yours sincerely,

John Miller
Head of Enforcement
British Gas

Answers to Consultation Questions

Introductory Comments

- We agree with Ofgem that the current process is working well. Many customers have benefited from voluntary redress payments. According to Ofgem's estimates, 522,000 customers received direct compensation worth a total of £20.1 million and a further £73.5 million was given to charitable organisations, following the relevant enforcement action for the years 2014-2015.
- In light of the above, a more detailed explanation is required of why change is needed in this area, including what specific customer benefits are not achievable under the current model, and precisely what the proposed changes are looking to address. Furthermore, Ofgem should set out the costs of running the current process compared to the medium to long-term costs associated with implementing either of the two options and their anticipated benefits. This would inform the discussion on the most efficient way of securing Ofgem's objectives.
- Ofgem's primary objective of voluntary redress funding is to maximise long-term benefits for energy customers by ensuring that funding is well targeted. We do not agree that a new model, such as the one favoured by Ofgem under Option 2, is required to achieve this objective. The current process can deliver this under the existing principles¹.

¹ As per Ofgem's letter of 14 December 2015: *Guidance on the allocation of voluntary redress payments*

Q1: Do you agree with our objectives for the allocation of voluntary redress? If not, please explain why.

Yes. These objectives also reflect the principles applicable to the programmes developed by our Energy Trust and have been applied successfully to programmes set up by the Trust to administer voluntary redress payments.

Our Energy Trust's programmes are managed by independent Trustees who are all experts in assisting vulnerable people in fuel poverty. The Trustees all hold senior positions in charities.

A recent example of our Energy Trust's work is the Healthy Homes programme. The Trustees have been administering this since 2015 when it was set up to handle the £11.1 million voluntary redress payment made by British Gas to the Trust². As part of this Healthy Homes programme:

- a large number of charities experienced in working with fuel poor and vulnerable consumers, including those recommended by Ofgem, were invited to apply for the £11.1 million funding. These included charities of different sizes across England, Scotland and Wales
- all applicants and successful recipient organisations were informed that the funding was a result of Ofgem's enforcement action and this was reinforced by the Trust during the programme lifecycle
- the Trustees selected 43 successful charities against set criteria agreed with Ofgem
- the programme's fund has been provided directly to these charities through grants to deliver projects assisting low-income and vulnerable households using energy efficiency and heating measures, soft energy efficiency measures such as energy advice, benefit entitlement checks and education and awareness raising initiatives
- all successful charities have been tracking their outcomes and impacts on health using the Government's Affordable Warmth Scheme and health impact evaluation approach
- an end of project impact report has been commissioned by the Trustees and is to be shared with Ofgem and wider stakeholder groups.

Q2: 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?

Yes. We recommend that all voluntary redress programmes are overseen by a group of independent expert advisors whose role is to:

- ensure effective targeting of the funds
- carry out due diligence on all applicants
- promote a diverse selection of recipients
- ensure delivery to maximise long term benefits for energy consumers
- conduct monitoring and post-delivery audit and reporting.

² British Gas made this voluntary redress payment following Ofgem's investigation into British Gas compliance with Article 14(1) of the Electricity and Gas (Community Energy Saving Programme) Order 2009 and with Article 9(1) and Article 9(1A) of the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (as amended).

Q3: 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?

- **We believe that the current system, with the current principles, is working well.**

The current process for allocating redress payments is working well and has delivered clear customer benefits. It is not clear to us what additional customer benefits are to be achieved by moving away from this proven approach and whether these outweigh the costs.

Whilst there may be some scope for enhancing the current principles, **we do not support the following principle:**

- *the allocation of voluntary redress payments to charities or trusts that were established by the company under investigation and/or whose name contains a reference to that company should be precluded.*

Many suppliers, including British Gas, have set up trusts and charities offering additional assistance and support to those in need.

Our Energy Trust:

- has benefited from appropriate charitable sector expertise
- has the ability to manage the bidding process and allocate the funds to a diverse selection of successful charities
- has a track record of delivery including carrying out appropriate monitoring and accurate reporting.

In line with Ofgem’s primary objective of maximising long-term benefits to energy consumers by ensuring that funding is well targeted, we have gained considerable expertise through our Energy Trust enabling us to reach the most appropriate recipients of any future redress payments.

The proposed principle would make it more difficult to utilise a vehicle which is already set up and proven to manage voluntary redress programmes well.

- **Ofgem’s concerns can be mitigated without the proposed additional principle**

The main drivers for introducing this additional principle appear to be Ofgem’s concern that:

- companies may benefit from the outcome of enforcement action by getting positive publicity for their trusts/charities
- customer information obtained through programmes operated by companies’ charitable trusts can be used to inform development of that company’s commercial products or services.

We have seen no evidence to suggest that these concerns are real. In any event, we consider that these two hypothetical concerns can be mitigated without the addition of the proposed principle because:

- under the current principles, Ofgem approves the recipient of the redress payment and in doing so ensures that the company proposing the redress payment does not benefit in any way (including through positive publicity). Ofgem therefore is well placed to reduce ex-ante any likelihood for such benefits occurring and intervene ex-post in the unlikely event that these do occur

- arrangements around some of the redress payments, together with Ofgem’s own publicity and media announcements, make any hypothetical publicity gain highly unlikely
- Ofgem can impose specific safeguards as part of the settlement process (see below) to prevent companies from benefiting from the redress payments they make or from any potential misuse of customers’ data.

Mitigating for positive publicity

- Concerns around suppliers benefiting from the outcome of enforcement action by getting positive publicity for their trusts or charities can be addressed as part of the settlement process. Ofgem can stipulate that specific communication is issued by any company making a redress payment and that this communication links clearly the redress payment to Ofgem’s enforcement action (this payment resulted from). This can be reinforced further by requiring a similar message to be included, in a prominent place, on the recipient organisation’s website, or in its magazine or newsletter. We would not, however, advocate issuing a specific communication to each and every customer benefiting from the redress recipient’s fund (should that be Ofgem’s intention under the ‘indirect recipient’ definition under the fifth additional principle proposed in paragraph 4.3 of the consultation document³). This, in our view, would be disproportionate, burdensome, and result in unnecessary costs.
- Arrangements can be designed to ensure that the company making the redress payment is a further step removed from the end recipient of that payment (i.e. the end customer). This means customers will be less likely to make a positive connection between the payment they receive and the company that initiated that payment following Ofgem’s enforcement action. Using our Healthy Homes example, whilst the redress payment was made to our Trust, the actual delivery of that payment to individual customers has been done by other charities that applied for the redress funding.
- In addition to the above, we also note that Ofgem’s media announcements at the time an investigation is concluded (e.g. press releases, interviews, YouTube videos) have been used to reinforce the link between a voluntary redress payment and Ofgem’s enforcement action this payment related to. Ofgem’s other communications, such as Enforcement Decision Panel’s annual reports or Ofgem’s enforcement conference presentations, have also been used to highlight this link. All of these serve as additional safeguards to mitigate for the hypothetical risk of companies benefiting from Ofgem’s enforcement action.

Mitigating for misuse of customers’ data

- Concerns around customer data handling can be addressed as part of the settlement process. Ofgem can stipulate within the settlement agreement how any such data should be used. We can confirm that our Energy Trust has not shared, and does not intend to share, customer data held as part of the Healthy Homes programme with British Gas.

In contrast, there is a real incentive for suppliers making redress payments to adhere to Ofgem’s allocation principles. This is because a failure to do so is likely to result in Ofgem not accepting this route in any future allocation decisions. It may also result in further negative publicity for the company offering the redress payment and may have other implications arising out of not satisfying the terms of the settlement agreement.

³ The fifth additional principle is as follows: *recipient organisations, including indirect recipients, should be told that the money they receive is a result of enforcement action*

In summary, regardless of which option Ofgem chooses, we recommend that this additional principle **is not** implemented by Ofgem.

- **We encourage Ofgem to re-examine the following additional principles:**
 - *an open bidding process should be used to select recipients.*
 - *the number of charitable recipients should be proportionate to the size of the penalty.*

An open bidding process should be used to select recipients

Running an open bidding process in each and every situation will add additional procurement costs and time to the settlement process. This can make the settlement option less attractive to companies and Ofgem.

We would like to understand what the anticipated costs are of implementing this principle and what benefits Ofgem is trying to secure. Without this, it is unclear to us how the benefits of using a bidding process outweigh the costs (as stated in paragraph 4.9 of the consultation document).

Alternative solutions could include:

- having a pre-approved list of recipients (chosen periodically based on certain pre-selection criteria) for certain types or values of redress payment
- running an allocation process on a periodic basis (e.g. annually) where the recipient(s) is(are) chosen for the redress payment due during that period.

The number of charitable recipients should be proportionate to the size of the penalty

We agree that, whenever possible, there should be a link between the charitable recipients and the harm suffered. Therefore this should remain one of the main criteria for selecting the recipient organisations for any redress payments.

However, introducing an artificial number of recipients depending on the size of the redress payment can stand in the way of achieving this objective. It can also result in complexity and unnecessary costs if the benefits of scale cannot be realised due to unnecessary fragmentation of the recipients. We believe that any redress payments should be made to the recipients most suited to receive the payment, taking into account the nature of the breach, and who is best placed to handle the volume of payments they receive (whether a single recipient or multiple recipients).

We therefore recommend that whilst, as a general guidance, the company volunteering redress payment may be encouraged to consider whether proposing a number of recipients for that payment can help better achieve the objectives for redress payment, there should be no obligation to nominate automatically more than one recipient (including in the circumstances where the value of that payment exceeds a certain threshold).

Q4: 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?

Please refer to our response to Q3 above for our views on Option 1 and the additional principles proposed by Ofgem.

In addition, Ofgem could consider the following principles to enhance the current model:

- all project submissions should be accompanied by a letter of support from the relevant energy conservation authority. Such authorities should be those defined by the Home Energy Conservation Act 1995. Alternatively, letters of support from sub-regional or county local authority energy partnerships could be accepted
- applicants should provide evidence of robust finance systems and governance, and evidence that demonstrates they are capable of managing projects of the required scale
- charity and not-for-profit partnerships are able to apply as well as single charities.

Q5: 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?

The current process for allocating redress payments is working well and has delivered clear customer benefits. It is not clear to us what additional customer benefits are to be achieved by moving away from this proven approach. We believe that a more detailed explanation of why change is needed in this area is required

With that in mind, the following aspects of the proposal should be explored further:

- greater clarity around the operational aspects of this solution, including a cost/benefit analysis and more detail on the proposed funding arrangements
- a clear distinction between the redress payments coming into any such fund and the cost of running the fund itself and the manner in which this is made public
- the running cost of the fund during periods of no redress payments coming in/all redress payments having been allocated would need to be considered and explained
- efficient regulation of the third party (how and by whom?)
- the scope for realising the benefits of the company offering redress payments being actively involved in the process of proposing the recipient(s) - for example, they can focus on identifying customers affected by that company’s actions
- the anticipated transition from the current model into the proposed one with particular focus on redress payments that are made/are to be allocated in the interim period.

Q6: How should the costs of the third party associated with allocating redress be funded?

Ofgem should clearly set out the likely costs of this option, including the costs of running the third party and how such costs would differ/fluctuate in correlation to the levels of redress payments (or none) held in the fund.

Q7: Should the company that made the redress payment have an input into the approval of recipients under this option?

We believe that there are benefits of having the company that made the redress payment help determine the recipient(s) of that payment, regardless of the option chosen. These include:

- encouraging the company to focus on understanding the impact of non-compliance on customers
- ensuring the company identifies the type/category of customers that could benefit most from the redress payment
- ensuring the company takes responsibility for its actions that have resulted in customer detriment
- internalising search costs of the proposed recipient(s).

Q8: How can we ensure that smaller potential recipients can bid and are not disadvantaged compared to larger potential recipients?

Notwithstanding our general observations on Option 2, as set out in our response to Q5, we note the following:

- it is not clear to us why smaller recipients would necessarily be disadvantaged compared to the larger ones when participating in the bidding process if Ofgem were to implement this option
- any procurement process run by the third party must be based on a set of fair, transparent and non-discriminatory criteria reflecting redress allocation objectives published by Ofgem
- a level playing field must be maintained for all potential recipients (regardless of their size) that meet specific requirements (for example, around financial solvency and appropriate governance structures).

Q9: 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?

As this is a variation of Option 2, our general position remains consistent with that for Option 2 (please see our response to Q5 above).

Consistent with our response to Q7 above, we believe there are benefits of having the company that makes the redress payment help determine the recipient(s) of that payment. Those benefits would not be achievable under this model.

We also do not believe that creating extra work for Ofgem, associated with setting up a charitable trust, is likely to be the best use of Ofgem's resources given that the current process is working well and that alternative providers already exist.

Q10: How should the costs of running a charitable trust set up by Ofgem be funded?

Notwithstanding our response to Q9 above, to inform a discussion on any potential funding options Ofgem should:

- clearly set out the likely costs of this option, including the cost/benefit analysis of running the charitable trust, and how such costs would differ/fluctuate in correlation to the levels of redress payments (or none) held in the fund
- explain how the efficiency of any such solution would be achieved and what level of funding would be considered appropriate to enable Ofgem to achieve its primary objective of maximising long-term benefits for energy customers.

Q11: What are your views on 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?

We think that there may be some scope for this in certain situations (for example, for larger redress payments and small recipient(s)) provided that any such payment is voluntary.

Our preference would always be to allocate all/most of any future redress payments to programmes developed by our Energy Trust, in accordance with Ofgem's principles.

Q12: Which of the options in this consultation do you think should be used and why?

We agree with Ofgem that the current process is working well and note that no justifications have been provided to warrant a departure from this tested and proven route.

Whilst there may be some scope for enhancing the current process, by introducing additional principles, we have strong reservations about one of the proposed principles (see our response to Q3 above).

The best approach to allocating redress to customers affected by any given enforcement action will vary from case to case. It appears arbitrary to introduce a principle prohibiting allocation through an established trust in the absence of any evidence suggesting such a route to delivering redress is detrimental to customers.

Q13: 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).

Ofgem should set out the case for change and the benefits of the proposed change and demonstrate how they outweigh the costs.

If it can be demonstrated that the benefits of Option 2 outweigh its costs, Ofgem should consider whether centralised programmes set up under this option can run in parallel to the current model, to maximise customer benefits.

This would enable companies with their own schemes to continue using them, whenever appropriate, for the purpose of voluntary redress payments. Those companies without their own schemes or Trusts could use the centralised programmes for the purpose of any redress payments.