

Allocation of voluntary redress payments in the context of enforcement cases

Consultation response to Ofgem

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

We welcome Ofgem’s consultation on this important issue which we believe was in need of review and change.

We agree with your objectives as set out in paragraph 2.4. However, as outlined below in our answer to Question 2, we believe that you need to outline clearly what you consider constitutes ‘benefit’ in this context – or how you would determine that – since this will ultimately frame the allocation of funding. You should also establish as one of your core objectives to ensure that the programme is designed to learn and improve over time, with each redress scheme monitored and evaluated in order to understand what does and doesn’t work (and why) and its associated costs and benefits; the results would inform future scheme funding priorities and delivery practices.

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?

As outlined in our answer to Question 1, Ofgem should state clearly in its objectives what it considers constitutes ‘benefit’ in the context of these redress payment schemes. We believe this as a key regulatory responsibility for Ofgem which should not be left vague (as it is at present) or to the discretion of the appointed manager/administrator of the funding process. We recognise that Ofgem may need to seek external input to finalise the definition of ‘benefit’ (since there will be plenty of views – ours are outlined below), but we consider this framing of what constitutes ‘benefit’ as a key responsibility for the regulator to fulfil at the outset of this new approach.

With this in mind, we would suggest the following wording:

“In this context, we consider ‘benefits’ to be the receipt of specific services by vulnerable households (as defined in your Customer Vulnerability Strategy) which improve their ability to secure affordable warmth, reduce their energy-related vulnerabilities, and obtain full value from the energy market:

This includes direct householder benefits such as;

- Improved household energy management capabilities;
- Enhanced financial capability (to manage fuel bills, secure benefit entitlements etc);
- More effective participation in the energy market;
- Improvements to the energy performance of the homes of vulnerable households (including insulation, heating, smarter heating controls, more efficient appliances etc).

And less direct benefits such as:

- Improved access to advice services which deliver the above (including support for development of advice services in areas with poor provision);
- Improvements to the effectiveness and efficiency of advice service delivery and the targeting and engagement of vulnerable households (e.g. through support for infrastructure, resources, and partnership development which enables improved service delivery, reduces costs and increases impact);
- Improving the knowledge which underpins service design and delivery through research and

evaluation (including innovative pilots/experiments). This should improve understanding and targeting/engagement of vulnerable households (to understand and meet needs and secure their engagement and take up of scheme benefits) and the quality of service design and delivery to vulnerable households (to improve its impact).

We explicitly exclude direct financial support, such as fuel debt relief, to vulnerable households (beyond those receiving compensation for poor service or market abuse).”

We also believe Ofgem should state clearly in its objectives that it wants to set up this new approach with learning and improving at its heart. This requires a commitment to sustained monitoring and evaluation which goes beyond simply reporting numbers of beneficiaries to include: effective impact monitoring; cost information, and; more qualitative assessment of what has been learned about good (and poor) practice and why approaches do or don't work.

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?

We do not support the continued involvement of energy suppliers in selection of recipients or determining the nature of funding priorities for beneficiaries. We believe this has been a significant weakness in the approach taken to date, with many examples of energy suppliers being unimaginative in their selection of beneficiary and the sorts of initiative that will be funded while gaining undue kudos through the association with charitable body which the redress payment creates (or strengthens). We strongly support Ofgem's preference for Option 2 (with a caveat outlined in our answer to Question 9).

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?

While we support the additional principles outlined (as they improve on what would otherwise be the status quo), we do not believe Option 1 is an appropriate approach to the use of redress payments.

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?

We welcome Option 2, subject to Ofgem providing the clear guidance on the sorts of benefits which the funding should be seeking to achieve, as outlined in our answer to Question 2 above.

We believe that a representative of Ofgem (either a senior member of staff or specifically appointed representative) should be directly involved in recipient selection decisions being proposed by the fund administrator. This is so that Ofgem can fulfil its role as the protector of the interests of existing and future energy consumers. Without this involvement, we believe there is a risk that the fund administrator starts to develop its own interpretation of these interests and Ofgem becomes detached from the setting of funding priorities with respect to each redress payment being made. While we would expect the fund administrator to make recommendations, we feel these decisions should remain with Ofgem as the consumer's representative in this process (see also our answer to

Question 9 for a variation of this).

We believe Ofgem should insist on full cost transparency from the third party and we would recommend the selection of a charitable foundation as fund administrator rather than a private sector Donor Advised Fund. This should be more tax efficient and creates potential for greater transparency and typically better understanding of the needs of the charitable sector.

We also believe that Ofgem should procure the monitoring and evaluation (using redress payment funds) described in our answer to Question 2 above, rather than this be left to the fund administrator themselves. That will maintain the independence of the M&E work and also ensure Ofgem is closely involved in reviewing the performance and impact of the funding and driving its continuous improvement.

Option 2 (and the Variation thereof) provides the potential (which we would encourage Ofgem to realise) for a long-term funding programme, rather than the 'spend-it-in-a-rush' approach which has characterised redress payment schemes to date. This is to be welcomed and we encourage Ofgem to ensure this potential is realised (it is not available from Option 1).

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

We would expect the third party costs (plus independent monitoring and evaluation costs) to be funded from an additional administrative charge as part of the redress settlement. We would also expect that fund administrators (including both charitable foundations and private sector DAF providers) may be able to secure some returns (e.g. deposit interest) on the redress payments they are holding which can contribute to these costs. This possibility – and overall administrative costs and practices - should be tested in the procurement process for a fund administrator, if that route is chosen.

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

We do not believe that it is appropriate for the company making the redress payment to have a decision-making role in approving recipients. However, we believe it would be good for them to be involved in the process as an observer – indeed we think this should be insisted upon by Ofgem as part of the redress process.

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

A good fund administrator would be able to ensure that many different sizes of recipients can access and benefit from the funds. This can be done by having different funding streams with different minima and maxima and potentially different application and due diligence requirements. Indeed, we believe it is important that Ofgem ensures that this is the case because it is likely to increase the impact of the funding.

Our experience is that relatively small amounts of money (£10 – 20K) for local voluntary organisations can often (though not inevitably) achieve much more impact for vulnerable households. In particular these organisations provide improved access to services through their existing relationships with relevant local services and agencies on the ground which cannot be replicated by large grants to big charitable organisations with a national footprint. Similarly, the

<p>Cheshire-Lehmann Fund demonstrated that small grants (c. £5K) for practical research projects can, if effectively undertaken and well disseminated, lead to improvements in practice by many different organisations and agencies. We believe this facility to fund smaller recipients is an essential feature of Ofgem’s new approach to redress payments.</p>
<p>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?</p>
<p>We believe this is a potentially very strong option because it retains for Ofgem full control of the redress payment programme. We would anticipate that, with the significant scale of funding available, the costs of operating such an ‘Ofgem Trust’ need not be any greater than a contracted-out option to a third party DAF or charitable foundation. That said, we suspect the legal and political difficulties of setting up a new independent trust linked to Ofgem would be significant.</p> <p>However, there is an intermediate option in which Ofgem appoints a fund administrator (like a DAF) but also selects/appoints the expert decision-making panel to which that administrator makes recommendations. This would directly address our concerns (voiced in our answer to Question 5) that a third party rather than Ofgem starts to determine the priorities, with the risk that the interests of energy consumers lose influence. It would keep the process close to Ofgem without involving the regulator in charitable trust administration and ensure that a range of expertise can be introduced into the process (rather than just ‘people the DAF knows or can persuade to be involved’).</p> <p>Such a panel could also advise Ofgem – and the fund administrator – on the benefits which the redress programme should be aiming to deliver (see our answer to Question 2) and oversee the monitoring and evaluation and associated improvement programme (see our answer to Question 5).</p>
<p>Question 10: How should the costs of running a charitable trust set up by Ofgem be funded?</p>
<p>See answer to Question 6. It is reasonable for these costs to be met from the redress payment.</p>
<p>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?</p>
<p>We do not support this approach of siphoning off funds for existing schemes. However, we believe it would be appropriate to allow such schemes to apply for funding through the processes established so that they have the potential to be funded if they can demonstrate in a competitive setting that they meet the fund criteria and represent value for money.</p>
<p>Question 12: Which of the options in this consultation do you think should be used and why?</p>
<p>We believe that Option 2 with a decision-making panel appointed by Ofgem would be the best approach. See our answer to Question 9 for reasons.</p>
<p>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).</p>
<p>No comment</p>