



Kieran Coleman  
Enforcement and Compliance  
Ofgem  
9 Millbank  
London  
SW1P 3GE

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Email to: [redress@ofgem.gov.uk](mailto:redress@ofgem.gov.uk)

### **Allocation of voluntary redress payments in the context of Enforcement cases**

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

We support Ofgem's general approach of seeking voluntary redress payments in non-contested enforcement cases in lieu of a financial penalty. As Ofgem highlights, this approach has resulted in significant sums of money being paid to charities, trusts and organisations by companies investigated by Ofgem to the benefit of consumers, and in particular vulnerable consumers.

Whilst the current process has worked well, we recognise why Ofgem wishes to explore possible improvements to ensure the maximum impact of these payments to consumers.

We see little benefit or see any appetite for proceeding with Option 1 compared to Option 2 if the additional principles requiring an open bidding process and which would preclude voluntary redress to certain charities or trusts are included as part of the current process. The inclusion of these additional principles would make Option 1 difficult for suppliers to manage. In particular, suppliers (especially smaller suppliers) will not have the resource or expertise to run an open bidding process and it is difficult to see how this requirement could be accommodated as part of the settlement process, which aims to resolve cases quickly. Because of this our preference is for Option 2.

We note the variants for Option 2, either through an existing organisation being responsible for managing the allocation of voluntary redress or by Ofgem establishing a charitable trust. We agree the key advantage of the latter is that the trust would be focused exclusively on supporting energy consumers, but we also recognise Ofgem's concerns regarding the potential substantial resource this could entail. On balance we would be comfortable with an existing organisation taking on this role providing the arrangements continue to ensure that voluntary redress is targeted at those charities, trusts and organisations that support energy consumers, and in particular vulnerable consumers. However, further detail and analysis is needed on how Option 2 would be funded.

**EDF Energy**  
40 Grosvenor Place, Victoria  
London SW1X 7EN  
Tel +44 (0) 20 7752 2187

[edfenergy.com](http://edfenergy.com)

*EDF Energy plc  
Registered in England and Wales  
Registered No. 2366852  
Registered office: 40 Grosvenor Place,  
Victoria, London SW1X 7EN*

Our detailed response to your questions is set out in the attached. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Ian George on 01452 654498, or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in blue ink that reads "Paul Delamare".

**Paul Delamare**  
**Head of Customers Policy and Regulation**

## Attachment

### Allocation of voluntary redress payments in the context of Enforcement cases

#### EDF Energy's response to your questions

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

We agree with the objectives identified by Ofgem. We think it is particularly important that voluntary redress continues to target charities, trusts and organisations that support energy consumers, and in particular vulnerable consumers. In achieving this, we agree with Ofgem that the arrangements should encourage diversity amongst organisations receiving voluntary redress.

Whilst previous settlements have resulted in a range of organisations receiving voluntary redress, there can be a tendency to favour particular organisations based on the scope and scale of their activities or their ability to absorb and deploy voluntary redress. This is not a criticism, but we think increasing the diversity of potential recipients where it is appropriate to do so could increase the consumer benefit of voluntary redress.

**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?**

Whilst we recognise Ofgem's concern that companies should not benefit in any way from making voluntary redress payments, we do not believe Ofgem's proposal under Option 1 to preclude voluntary redress to charities or trusts established by the company under investigation and/or whose name contains a reference to the company is justified. In reality, suppliers do not seek to gain (or indeed obtain) positive publicity from voluntary redress payments, either directly or indirectly through being associated with the recipient organisation. For example, we do not believe customers would be confused into thinking voluntary redress payments have been made by a company of its own volition given the publicity surrounding Ofgem enforcement decisions.

Consequently, providing the voluntary redress is truly additional to (and not in lieu of) charitable donations made or expected to made, and is not used by the recipient organisation in a way that confers a benefit to the company under investigation (e.g. reducing energy debt of the company's customers), we see no reason why voluntary redress to such organisations should be ruled out.

We note there is not anything under Option 2 to suggest that such charities or trusts would be precluded from bidding for voluntary redress funds. Whilst under Option 2 there would not be a direct link between the recipient of the voluntary redress and the company under investigation, an indirect link might nevertheless exist, especially if the bidding process is timed to coincide with enforcement decisions. We would like to better understand Ofgem's position on this.

**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?**

Continuing with the current process with the additional principles identified by Ofgem would be more difficult and onerous for suppliers to manage. In particular, suppliers (especially smaller suppliers) will not have the resource or expertise to run an open bidding process. As Ofgem highlight, it would also create a conflict with the desire to resolve cases quickly through the settlement process.

Ultimately, the introduction of an open bidding requirement into the current process would result in this process being very similar to that under Option 2. However, under Option 2 the process would be managed by an independent third-party with the necessary expertise and ability of the charity/voluntary sector. Consequently, it is difficult to see the advantages of a modified Option 1 over Option 2 in delivering Ofgem's objectives for voluntary redress.

**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?**

As indicated above, we think increasing the diversity of potential recipients of voluntary redress could increase its consumer benefit. However, we recognise the risk of losing economies of scale should this result in smaller amounts being paid to each recipient. We agree with Ofgem that the use of bands could be one way of addressing this concern. This could be based on the approach suggested by Ofgem but could also include additional elements to meet both objectives (e.g. for very large settlement agreements of £X million or more, at least £Y million must be donated to N number of recipients).

As indicated under Q2, we do not agree with Ofgem's blanket proposal that the allocation of voluntary redress to charities or trusts established by the company under investigation and/or whose name contains a reference to that company should be precluded.

As highlighted under Q3, we think the introduction into the current process of an open bidding requirement would be difficult and onerous for suppliers to manage.

If these principles are adopted, we see little benefit or appetite for proceeding with Option 1 compared to Option 2.

**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?**

For the reasons stated above, we think Option 2 will best meet Ofgem's objectives for voluntary redress.

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

This is our main concern with Option 2. In principle, we support the running costs being covered either through investing or earning interest on the yet-to-be-allocated money in the fund, but the implications of this approach, both in terms of when money held in the fund is available for allocation (and the corresponding consumer benefit), and the risk of it not fully covering the costs involved (and how any shortfall would be recovered), needs further analysis. In particular, we would be concerned if the company under investigation was entirely responsible for meeting any shortfall.

Further analysis and detail will be needed before any decision to proceed with Option 2.

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

The main attraction of Option 2 is that the fund will be managed by an independent third-party with the necessary expertise and ability to manage the voluntary redress payments. Subject to the objective that voluntary redress should continue to be focused on energy consumers, the fund should have complete discretion on fund recipients (approved by Ofgem if deemed necessary) without input by the company concerned.

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

A register of potential recipients with information on the nature of their work, activities and the help they provide could be created from which expressions of interest could be invited, either generally or through targeted invitations. The bidding process itself should be simple, straightforward and least resource intensive as possible to those bidding.

**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?**

We agree that the key advantage of this option is that it would be exclusively focused on supporting energy consumers (although this could also be achieved under Option 2 through rules regarding its operation or by Ofgem having the final allocation decision).

Although Ofgem has expressed concern regarding the potential resource implications of this option, it might also be a cheaper option than Option 2.

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

It would not be appropriate to view such costs as part of Ofgem's normal operating costs (and therefore borne by consumers). Consequently the same considerations discussed in paragraphs 4.37 to 4.39 of the consultation apply to this variant of Option 2.

**Q11. 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?**

We do not agree that voluntary redress should be used to provide additional support to Government funded schemes. We believe it is more appropriate to keep the focus on charitable organisations/good causes, especially given Ofgem's desire to see greater diversity of recipients.

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

For the reasons stated above, we think Option 2 will best meet Ofgem's objectives for voluntary redress subject to the funding arrangements.

**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).**

No response.

**EDF Energy  
August 2016**