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24 August 2016

Dear Kieran

**Re: Allocation of voluntary redress payments in the context of enforcement cases**

On behalf of Electricity North West, we appreciate the opportunity to respond to the above consultation. Our responses to the detailed questions posed are provided in Appendix 1 and our thoughts are summarised below.

We recognise that the Authority has seen a significant increase in its enforcement activity over recent years, resulting in significant redress payments being made. Whilst we support the need for effective enforcement as a deterrent, we strongly believe that robust regulation that can be effectively complied with by licensees is essential. In instances where issues arise, we believe early interaction between licensees and the Regulator is likely to result in a more effective outcome for consumers. Given the costs and time burden to all parties of enforcement action, we suggest that reserving such action for those instances of ongoing or significant detriment is most appropriate. The proposals set out in the current consultation seem to envisage the need for a complex redress system that appears to be at odds with the Authority's stated intention to take a "*proportionate approach to compliance and enforcement*".

We are also somewhat confused by the terminology used within this and the associated documents with regards to what constitutes voluntary redress payments and there seems to be some confusion as to whether or not this includes payments to affected consumers. Paragraphs 6.2 and 6.4 in the Statement of policy with respect to Financial Penalties and Consumer Redress seems to suggest that voluntary redress payments may include those made to affected consumers. However, the consultation in question seems to be considering such payments separately. As such, improved clarity around these different categories of payments may assist the reader to understand the Authority's intent.

For the avoidance of doubt, one of the significant benefits of the redress scheme is that it enables payments to be made to affected customers. As such, it is our firm opinion that wherever practicable, redress payments should be made first and foremost to those customers who have suffered detriment. In addition, where the non-compliance has resulted in costs for other parties within the sector, including the Authority and Government departments, that would normally be transferred through to customers or borne by these third parties then these costs should be covered as part of the package.

Whilst we appreciate the intent of the current consultation and understand the significant value of redress payments agreed to date, we are unclear as to whether or not this is an enduring level. As a licensee, we are very mindful of the potential implications of non-compliance and do not take the possibility of enforcement action lightly. We are therefore

unconvinced that the overheads associated with giving responsibility to a third party, both in terms of the administrative costs of the Authority in managing the third party and the costs borne by the third party themselves, can be justified. An evolution of the current principles, with additional involvement of an organisation like Citizens' Advice, under its statutory duties, seems to us to be a more proportionate response to the concerns expressed in the consultation document.

We hope this response will assist you. If you wish to discuss any aspect of our response, please feel free to contact me (details above) or Jen Carter ([jen.carter@enwl.co.uk](mailto:jen.carter@enwl.co.uk)).

Yours sincerely

A handwritten signature in black ink that reads "Sarah Walls". The signature is written in a cursive, slightly slanted style.

**Sarah Walls**  
**Head of Economic Regulation**

## Appendix 1 – Electricity North West response to the detailed questions

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

***Q 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 stated above, we believe that wherever practicable, redress payments should be made first and foremost to those customers who have suffered detriment. In the event of this not being appropriate, we agree with the primary objective but have a few comments on the proposed approach to achieving this.

Firstly, we strongly believe that where the licensee in question is only active in a limited geographic region that the benefits of any payments are focussed on delivering benefits within that region. This is particularly applicable for network companies with defined licensed areas but may also apply to other licensees. In such instances, the detriment has typically been confined to a limited sub-set of energy consumers and therefore, in order to ensure the link between the recipient / project and the harm generated, we suggest there should be a requirement that the payments benefit consumers within the affected area.

Secondly, we are unconvinced whether an open, transparent process is required. Such a process introduces costs not just for the licensee but also for potential recipients, many of whom may not be successful. We suggest that this may be more appropriate to consider on a case-by-case basis, considering the size of payment/s in question and the facts of the case in question. It may be more appropriate, for example, for Citizens' Advice, under its statutory role, to assist the Authority and the affected licensee in identifying appropriate recipients.

***Q 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?***

***Q 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?***

We tend to prefer this option as it has the lowest overhead costs associated with the payments agreed under a redress package to parties other than the affected licensee. We generally agree with the proposed additional principles listed, and in particular that there should be no link in the name or organisational structure between the licensee in breach and the recipient.

As described above, we are unconvinced about the proposals for an open, transparent process. We are also unsure whether a bidding process could effectively be run in parallel with the settlement process. As set out above, we suggest there may be merit in Citizens' Advice in supporting the identification of recipient/s by the licensee and Ofgem.

With regard to the additional principles, we think there may be merit in considering requiring that the funding is used to support organisation/s relevant to the particular issue identified. For example, if the non-compliance relates to services for SMEs then may be more appropriate to fund a project to support these companies and how they access the energy market.

**Q 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?**

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

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

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

**Q 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?**

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

As set out above, we are unclear whether the level of redress payments seen over recent years is at an enduring level. As a licensee, we are very mindful of the potential implications of non-compliance. We are therefore unconvinced as to whether the costs of administering the proposed alternatives are justified and believe it is preferable that the redress payments are not used to cover such administrative functions.

Whilst we appreciate that the administration of such funds is not the Authority’s core remit, we do believe it is vital that the Authority continues to oversee this activity to ensure that any such funds are appropriately handled. As such, in the event that this model is adopted, we believe it is important that the ultimate decision as to where redress payments are made remains with the Authority.