

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

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Dear Kieran,

Allocation of voluntary redress payments in the context of enforcement cases

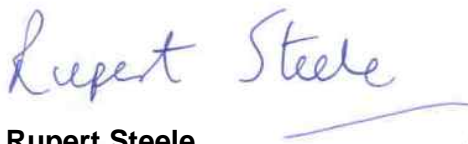
Thank you for the opportunity to respond to the above consultation which seeks views on Ofgem's proposals for allocation of voluntary redress payments in the context of enforcement cases.

We agree with Ofgem that the current process for allocating redress payments generally works well and we would therefore, on balance, support Option 1, ie maintaining the current process with enhanced principles, subject to avoiding creating a disproportionate level of bureaucracy. The enhanced principles proposed by Ofgem appear sensible (though we consider the first three principles to be the most important and that the final two should only be applied to the extent that avoids any risk of prejudicing the first three). On that basis, the principles should achieve the primary objective of maximising long-term benefits for energy consumers, but we would encourage Ofgem to avoid making the application process and reporting requirements so onerous that smaller charities are discouraged from applying.

If Ofgem decides in favour of Option 2, ie appointing a third party to be responsible for allocating payments, it should ensure that the third party is capable of responding to peaks and troughs of funding in an efficient manner, so that costs are not incurred when there is no funding to allocate. This suggests that it might be better as an add-on role for an existing organisation (such as a Donor Advised Fund (DAF)), rather than the sole purpose of a new entity – provided that the DAF has sufficient knowledge and expertise in energy supply. We see no reason why the costs of the third party (assuming that they have been selected through an appropriate process) should not be funded from the redress amount.

Our responses to the consultation questions are set out in the annex to this letter. Should you wish to discuss any of the above points, please contact me via the details provided or contact Rhona Peat (rhona.peat@scottishpower.com) on 0141 568 3207.

Yours sincerely,



Rupert Steele
Director of Regulation

**ALLOCATION OF VOLUNTARY REDRESS PAYMENTS IN THE CONTEXT OF
ENFORCEMENT CASES
SCOTTISHPOWER RESPONSE**

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.**

We generally agree with objectives proposed. In particular, we agree that a range of charities should benefit from consumer redress, taking into account charities' ability to manage such monies and to utilise sums within a set period of time.

We think it is important that any change in the process, however, does not lead to an expectation by charities of their receiving funding from redress payments. This requires careful stakeholder management.

Of the specific approaches proposed in paragraph 2.4, we consider the first three to be fundamental to achieving the primary objective of maximising long term benefits for energy consumers and would wish to see these prioritised in the decisions on redress payment allocations. The remaining two points relate to the operational processes of funding allocations and are important to ensure the administration is efficient and effective. They should not be applied to an extent that risks prejudicing the first three objectives, Whilst we agree with these in principle, it is important that the administrative approach is proportionate to the size of redress payments.

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 proposed bidding process by charities is positive in principle. It should be borne in mind, however, that larger organisations / charities tend to have the starting advantage of greater resource(s) when making applications.

Ofgem's proposal that redress benefits "a wider number and spread of charitable recipients" is welcome. This could, and should, allow for smaller organisations to apply, who may not to date have had the organisational bandwidth to directly contact energy supply companies following imposition of a penalty. In our view, charities need not have a national reach to apply but could have a regional focus.

To allow for a successful interaction with a range of charities, in our view the application and bidding process should not be overly onerous, or off-putting by its complexity, as this may put off organisations with stretched resources. We would encourage Ofgem to therefore consider the practicalities as to how smaller charities could apply, and the resource and advice that could be available to them in doing so – for example, using a third sector intermediary body, and undertaking stakeholder engagement as to the bidding process before its launch.

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?

We agree with Ofgem that the current process works well and that the principles for allocation of redress are appropriate.

We think this option is generally likely to have a lower cost impact than Option 2 as it would be managed by suppliers rather than having to set up a third party. However, we do have some questions about the proposed principles – set out in response to Question 4.

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?

We generally agree with the additional principles being proposed by Ofgem but have concerns about:

- the time and resource required from suppliers to run an open bidding process, and the requirements which may be set by Ofgem and how these are to be applied and monitored;
- for larger amounts of redress, the challenges of finding a sufficient number of appropriate charitable recipients;
- for small charities, the requirement to monitor and report on the impact of the funding they receive can be challenging as they may not have the necessary resource immediately available. This could/can lead to the same larger organisations receiving redress time and again.

One of Ofgem’s proposed principles states that “recipient organisations, including indirect recipients, should be told that the money they receive is as a result of enforcement action”. Is it Ofgem’s intention that indirect recipients would include the consumer? We are not convinced that this would be appropriate or practicable.

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 can see some benefits in this approach as long as it is managed to minimise costs, and as long as a third party can be found which is able to match the knowledge and understanding of energy consumers that is available to energy suppliers.

Any third party selected for this role should be capable of responding to peaks and troughs of funding in an efficient manner, so that costs are not incurred when there is no funding to allocate. This suggests that it might be better as an add-on role for an existing organisation (such as a Donor Advised Fund (DAF)), rather than the sole purpose of a new entity..

We also think that steps would need to be taken to ensure that this approach does not result in an expectation of funding being provided to particular charities on an ongoing basis. As outlined in response to Question 1, this requires careful stakeholder management.

However, we think that a third party could ultimately have more experience and dedicated resource to run open bidding processes than individual energy companies would. This would lead to greater efficiency and more consistency in the approach to allocating redress payments.

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

The simplest approach would be for the costs of the third party be funded from the redress payments – either the ‘capital’ amount or the interest earned on it (the distinction between the two is not that important: in either case, if the money were not spent on the third party, it would be available to the recipient charities). The administrative costs of allocation are akin to the administrative costs incurred within recipient charities: in both cases, expert and informed decision making by administrators can act as a ‘multiplier’, helping to deliver significantly greater end benefits than might be achieved without such input. Hence, it would be wrong to see money spent on allocation as somehow wasted (assuming of course that the allocation body itself is competent – which is the purpose of the competitive selection exercise).

Accordingly, we think it would be justifiable to fund the costs of allocation out of the redress funds, and this would also be the most straightforward approach. An alternative approach would be recover the administrative costs of allocation as a surcharge on the agreed redress amount, so that the company at fault was seen to pay for the administration. However, given that the selection of the third party (and hence the amount of the surcharge) is likely to be within the gift of Ofgem, we think it would be more appropriate for the costs to be taken out of the overall redress payment.

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

In some cases, the company will have a greater understanding of consumers and their needs, and therefore we think that allowing the company to have input will allow redress funding to go to those in most need.

We expect that some companies have existing relationships with charities and while we agree that this shouldn’t lead to these same charities getting multiple redress funds, we think in some cases it is appropriate to allow funding to be allocated using these relationships if the objectives of those charities are shared with the overall redress objectives.

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

As outlined in our response to Question 2, to allow for a successful interaction with a range of charities, the application and bidding process should not be overly onerous, or off-putting by its complexity to organisations with already stretched resources. We would encourage Ofgem to consider the practicalities as to how smaller charities could apply, and the resource and advice that could be available to them in doing so – for example, using a third sector intermediary body, and issuing guidance materials.

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?

In principle the establishment of an independent charitable trust is not controversial. However, the trust would need to ensure and maintain its independence, including from Ofgem. This would mean that the trustees should not be directed by Ofgem. If, however, the trust is to be funded and supported by Ofgem, together with input provided as to its objectives, we are not sure the independence of the trust could be secured, or withstand associated scrutiny by charity regulators.

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

Please see our response to Question 6. Also, as noted in response to Question 9, appropriate measures would need to be taken to ensure the charitable trust has guaranteed independence.

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?

We are broadly supportive of specific schemes being supported, but the allocation of a set portion – at least in the short term – may not be appropriate. This could mean, or potentially encourage, redress as an alternative to existing funding of such schemes, rather than providing additional support. It is not clear too how such schemes would ‘bid’, and whether they would have to be subject to the full bidding process. We would suggest they should be, to ensure the entire process has transparency.

Chapter 6: Overall view

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

As outlined in response to Question 3, we agree with Ofgem that the current process works well and that the principles for allocation of redress are appropriate. We therefore, on balance, support Option 1. We recognise the merit in an open bidding process, but as variously outlined in this response paper, we would encourage a full assessment be conducted by Ofgem to ensure that any such process allows the widest range of potential applicants.

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).

We have no other proposals.