

To all energy market participants  
and other interested parties

Date: 14 April 2016

## **Guidance on redress schemes for infringements of competition law**

### *Background*

This guidance is aimed principally at businesses seeking to provide compensation under a redress scheme for infringements of competition law<sup>1</sup>. Approved voluntary redress schemes are a form of alternative dispute resolution. Where a business offers a redress scheme, those affected by the infringement are able to claim compensation through such a scheme without the need to pursue litigation in the courts.

The Competition and Markets Authority (CMA) and other concurrent competition authorities such as Ofgem are able to approve certain voluntary redress schemes under the Competition Act 1998 (CA98) as amended and the Competition Act 1998 (Redress Scheme) Regulations 2015<sup>2</sup>.

The CMA and other concurrent competition authorities are required to publish guidance on applications for approval of redress schemes, the approval of such schemes, and the power to enforce approved schemes (redress scheme guidance)<sup>3</sup>. This letter outlines our guidance which was approved by the Secretary of State as required under section 49C(10) of the CA98.

The guidance will be kept under review and may be revised to reflect developing experiences in this area and any relevant developments in the wider competition redress landscape.

### *Guidance on redress schemes for CA98 infringements*

The CMA published its redress scheme guidance on 14 August 2015: "Guidance on redress schemes for infringements of competition law (CMA40)". After reviewing the CMA's redress scheme guidance, Ofgem has decided that, with the exception of the contents relating to prioritisation criteria<sup>4</sup>, it is appropriate to adopt the CMA's guidance.

Information on Ofgem's different approach to prioritisation criteria is set out below. Ofgem therefore considers that this letter and the relevant contents of the redress scheme guidance published by the CMA constitute Ofgem's guidance for the purposes of section 49C(9) of the CA98.

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<sup>1</sup> Guidance on redress for infringements of sectoral regulation can be found here: <https://www.ofgem.gov.uk/publications-and-updates/open-letter-guidance-allocation-voluntary-redress-payments>

<sup>2</sup> S.I. 2015/1587

<sup>3</sup> Section 49C(9) of the Competition Act 1998, as amended by the Consumer Rights Act 2015

<sup>4</sup> As outlined in section 3.2, 4.8 and footnote 17 of the [CMA published guidance \(14 August 2015\) Guidance on redress schemes for infringements of competition law \(CMA40\)](#)

## *Applicants*

The provisions in CA98, introduced by the Consumer Rights Act 2015 (CRA15), permit a person (the applicant) to submit for approval a voluntary redress scheme to the CMA or Ofgem as a concurrent competition authority.

Applications for approval can be submitted by businesses that have infringed competition law and are seeking to provide compensation under a redress scheme. Applications can be made during the course of our investigation; however, a decision to approve the scheme will not be made until an infringement decision has been reached. We will also consider applications involving past infringement decisions made by Ofgem, the CMA or the European Commission.

## *Application process - Ofgem prioritisation criteria*

We would normally expect that an application for approval of a redress scheme would be made to Ofgem where that application relates to a decision of Ofgem or a current Ofgem investigation. In respect of other cases relating to the energy sector, the person considering making an application may also wish to apply to Ofgem or to the CMA if the application relates to a decision of the CMA or a current CMA investigation.

Ofgem will decide on a case by case basis whether to prioritise an application for a redress scheme. We will consider our own prioritisation criteria and not those of the CMA as referenced in the CMA's guidance on the approval of redress schemes.

We will have regard to Ofgem's enforcement vision: "to achieve a culture where businesses put energy consumers first and act in line with their obligations." We will prioritise applications that support Ofgem in realising that vision, and in delivering the five Consumer Outcomes (lower bills, reduced environmental damage, improved reliability and safety, better quality of service, and benefit to society including distributional concerns), as set out in our corporate strategy<sup>5</sup>. In addition, we will also consider our case prioritisation criteria (set out in section 3 of our Enforcement Guidelines<sup>6</sup>), which include our annual enforcement priorities.

Where cases do not relate to the energy sector Ofgem will not have jurisdiction to consider applications and potential applicants should consider making an application to the CMA or to the appropriate sector regulator. Applications received by the CMA or a regulator may be transferred to the CMA or another regulator where appropriate. Any such transfer would have regard to the Competition Act Concurrency Regulations and other relevant rules.

## *Approval of schemes*

The process for approving schemes will be in line with CMA's guidance. For guidance on applications for redress schemes or further detail of the process for approval and the power to enforce approved schemes please refer to the CMA's guidance<sup>7</sup>.

If you would like to discuss any of the issues raised in this letter, please contact Sweta Deb at [redress@ofgem.gov.uk](mailto:redress@ofgem.gov.uk) or on 020 7901 7000.

Yours sincerely,

**Anthony Pygram**  
**Partner, Enforcement and Compliance**

<sup>5</sup> [Ofgem \(18 December 2014\) Our Strategy](#)

<sup>6</sup> [Ofgem \(12 September 2014\) Enforcement Guidelines](#)

<sup>7</sup> [CMA \(14 August 2015\) Guidance on redress schemes for infringements of competition law \(CMA40\)](#)