



Response to Ofgem Consultation: Allocation of voluntary redress payments in the context of enforcement cases

Introduction

Energy Action Scotland (EAS) is the Scottish charity with the remit of ending fuel poverty. EAS has been working with this remit since its inception in 1983 and has campaigned on the issue of fuel poverty and delivered many practical and research projects to tackle the problems of cold, damp homes. EAS works with both the Scottish and the UK Governments on energy efficiency programme design and implementation.

EAS welcomes the opportunity to respond to this consultation.

Fuel Poverty in Scotland

The Scottish Government is required by the Housing (Scotland) Act 2001 to end fuel poverty, as far as is practicable, by 2016 and plans to do this are set out in the Scottish Fuel Poverty Statement. The number of Scottish households living in fuel poverty dropped from 756,000 (35.6%) in 1996 to 293,000 (13.4%) in 2002. Half the reduction was due to increases in household income, 35% to reduced fuel prices and 15% to improved energy efficiency of housing¹. However, the most recent figures² from the Scottish House Condition Survey Key Findings Report show that there were 845,000 households living in fuel poverty in Scotland in 2014, representing 35% of total households.

Background Information and context for EAS response

Since 2008, Ofgem has opened 65 investigations into energy companies. Of these 20 were completed/closed without a fine or redress order being applied. From the remaining 45 investigations, 6 are ongoing and 39 have closed.

During 2014, fines and redress orders (from 6 investigations) totalling over £23m were applied. More than half of this related to marketing breaches. During 2015, fines and redress orders (from 13 investigations) totalling over £71m were applied. Over £54m of this related to CESP obligations breaches by 6 energy supply and generation companies.

In 2015, Ofgem opened only one investigation, which is ongoing. Only two investigations have been opened in 2016 and both of these are ongoing.

Without doubt, energy companies are more aware of Ofgem requirements and are taking steps to ensure compliance. It is unlikely that they are prepared to continue taking redress 'hits' at the rate previously seen and are likely to take preventative action.

Accordingly, EAS believes that it is inappropriate to introduce costly changes to a system that already works.

If the number of breaches falls as it appears to be doing – there will be less money available to distribute. Increasing numbers of organisations applying for decreasing pots of funding is frustrating and often raises expectations that can't then be met. It increases the likelihood that applications for the reduced funding will be judged on how well-written they are. The cost of setting up a DAF or Trust becomes even less justifiable.

Please see table overleaf, for information:

¹ Fuel Poverty in Scotland: Further Analysis of the Scottish Housing Condition survey 2002

² Scottish House Condition Scotland Key Findings Report 2014

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Consumer Redress & Fines

Investigation opened	Investigation closed	Breach area	Total fine/redress	No. of cases opened in year	Total fines/redress applied
Apr-2008	Jan-2009	marketing	£1,800,000	2	£9,800,000
Nov-2008	May-2011	obligations	£8,000,000		
Jan-2009	Apr-2011	network connections	£100,000	6	£6,700,000
Jan-2009	Jun-2010	service	£200,000		
Jun-2009	Apr-2011	network connections	£500,000		
Sep-2009	Feb-2014	marketing	£3,500,000		
Sep-2009	Apr-2011	network connections	£400,000		
Nov-2009	Nov-2009	network connections	£2,000,000		
May-2010	Nov-2011	obligations	£1,000,000	8	£22,375,000
Jun-2010	Jan-2012	service	£2,000,000		
Jun-2010	Jan-2012	service	£2,500,000		
Aug-2010	Oct-2014	service	£3,000,000		
Sep-2010	Dec-2013	marketing	£8,500,000		
Sep-2010	May-2013	marketing	£500,000		
Sep-2010	May-2012	marketing	£4,500,000		
Nov-2010	Oct-2012	obligations (gas transport)	£375,000		
Mar-2011	Jul-2014	tariffs, payments	£750,000	5	£9,075,000
Mar-2011	Aug-2013	obligations (CERT)	£3,000,000		
May-2011	Oct-2012	obligations (RO)	£125,000		
Oct-2011	Feb-2012	emergency standards	£900,000		
Oct-2011	Feb-2012	emergency standards	£4,300,000		
Jan-2012	May-2014	non-dom switching	£4,000,000	2	£16,000,000
Apr-2012	Jul-2014	marketing	£12,000,000		
Apr-2013	May-2015	obligations (CESP)	£11,000,000	9	£55,075,000
Apr-2013	Mar-2015	obligations (CESP)	£28,000,000		
Apr-2013	Apr-2015	obligations (CESP)	£10,600,000		
Apr-2013	May-2015	obligations (CERT)	£500,000		
Apr-2013	Jun-2015	obligations (CESP)	£450,000		
Apr-2013	Jul-2015	obligations (CESP)	£2,400,000		
Apr-2013	Aug-2015	obligations (CESP)	£1,750,000		
Jun-2013	Apr-2015	billing, service, tariffs	£250,000		
Sep-2013	Jul-2014	obligations (RO, FITs)	£125,000		
Jun-2014	Jan-2016	billing, service, standards	£26,000,000	10 (7)	£60,540,000
Jun-2014	May-2015	tariffs, payments	£7,750,000		
Sep-2014	Dec-2015	marketing	£250,000		
Sep-2014		non-dom meters			
Sep-2014		non-dom meters			
Oct-2014	Jun-2016	billing, service, standards	£18,000,000		
Oct-2014	Dec-2015	switching, billing	£980,000		
Oct-2014	Dec-2015	obligations	£7,000,000		
Nov-2014	Nov-2015	switching	£560,000		
Dec-2014		competition (connections)			
Oct-2015		billing, service, standards		1 (0)	£0
Jul-2016		switching		2 (0)	£0
Jul-2016		billing, service, standards			

Source www.ofgem.gov.uk/investigations

Response Questions

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

EAS agrees with the primary objective of maximising long term benefits for energy consumers and in particular a focus on support for vulnerable consumers.

EAS does not agree with the options/variations proposed by Ofgem.

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?

Ofgem's criteria include 'ensuring allocation decisions are made by experts who are well placed to identify and assess charitable options and select those that will deliver maximum benefit'. Ofgem should take into fuller consideration the existing process i.e. the energy companies already have considerable expertise. They know what comprises value for money; know their charity partners and those partners' abilities and expertise. Energy companies have already carried out screening and the costs of that have already been absorbed. Consequently there are already processes in place including application, monitoring, evaluation and reporting for a range of activities and purposes.

Accordingly EAS believes that Ofgem's 'forward approach' is more likely than not to place a burden on energy companies and charities.

Whilst EAS understands Ofgem's preference for an open, transparent bidding process there is a real concern that funding will be allocated on the basis of ability to write bids rather on ability to reach and support effectively consumers in need.

Ofgem considers that the allocation process could be enhanced by considering 'the level of knowledge of the charity sector that those selecting and approving recipients should have'. EAS believes it is more important – in fact imperative – that the level of knowledge encompasses domestic energy efficiency, fuel poverty and vulnerability as well as an inherent understanding of a range of impact factors e.g. differing geographies.

Many vulnerable consumers benefit from debt writ off re consumer redress. EAS believes that Ofgem must ensure that should this support mechanism continue, it must be accompanied by tailored, face-to-face advice. In addition Ofgem must determine a means of ensuring that energy companies do not benefit from improved debt ratings.

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?

Overall, EAS does not consider this a viable option, neither does it consider that the additional principles offer an 'enhancement'. Concerns regarding an open business process are as outlined at question 2 above. In addition this approach would create extra work and costs for energy companies. This introduces a very real risk that energy companies opt for the simplest approach available to them i.e. directing their fines and redress money to Treasury. Ofgem's suggestions increase the appeal of this approach.

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?

Overall EAS does not consider this a viable option, see response to question 3 above.

However, EAS agrees that redress funding should be used to support vulnerable energy consumers, with a specific focus on supporting their energy-related needs.

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?

EAS does not consider this a viable option. Ofgem acknowledges there are costs accruing to this approach but makes no attempt to specify these.

Ofgem’s criteria includes ‘ensuring allocation decisions are made by experts who are well placed to identify and assess charitable options and select those that will deliver maximum benefit’. Ofgem should take into fuller consideration the existing process i.e. the energy companies already have considerable expertise. They know what comprises value for money, know their charity partners and those partners’ abilities and expertise. Energy companies have already carried out screening and the costs of that have already been absorbed. Consequently there are already processes in place including application, monitoring, evaluation and reporting.

Ofgem considers that the allocation process could be enhanced by considering ‘the level of knowledge of the charity sector that those selecting and approving recipients should have’. EAS believes it is more important – in fact imperative – that the level of knowledge encompasses domestic energy efficiency, fuel poverty, vulnerability as well as an inherent understanding of a range of impact factors e.g. differing geographies.

Ofgem is keen to ensure that energy companies do not benefit in any way from making a voluntary redress payment. However any potential for reputational benefit would be easily addressed by formal guidelines regarding redress funding, its source and what can/can’t be said by those ‘distributing’ the funding.

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

Not applicable – EAS does not support this option see question 5 above.

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

Not applicable – EAS does not support this option, see response question 5 above.

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

Not applicable – EAS does not support this option, see question 5 above.

To ensure that smaller organisations can benefit, Ofgem could encourage energy companies to make funding and support more readily available via their current and preferred distribution channels (an approach that has already proved successful).

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?

EAS does not support option 2 nor does EAS believe the proposed variations provide any better options than already exist.

There is some irony in Ofgem suggesting that they establish themselves as a Trust given that their preference is to preclude energy company Trusts from the funding allocation process.

This is no less costly than option 2 and offers no advantage. Ofgem is not clear about the means by which they would ensure impartiality in managing their own Trust.

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

Not applicable – EAS does not support this option.

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?

EAS does not believe that specific schemes should be supported particularly as this means in effect redress monies might displace government funding for example (and as per the example given by Ofgem) The Big Energy Saving Network. This approach if adopted might further encourage energy companies to take the less complex and less costly route of sending fines and redress direct to Treasury.

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

EAS does not believe that either of the options or their variations should be used, for the reasons already given.

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).

EAS believes that the current allocation mechanisms are appropriate. Ofgem acknowledges that the current system works well and given its research prior to this consultation is no doubt already aware of the benefits and costs of maintaining the status quo.

Please see also Appendix 2 Feedback Questionnaire for addition relevant comments.

Appendix 2 - Feedback Questionnaire

1. Do you have any comments about the overall process, which was adopted for this consultation?

Within its principle objective to protect the interest in existing and future electricity and gas consumers Ofgem has committed to promoting value for money. Ofgem states that its practices (in relation to being 'transparent in our work at all times') include providing full, timely and thorough consultation opportunities. Ofgem further states that it is committed to setting out costs and benefits of all major decisions, through Impact Assessments.

EAS is disappointed to note that whilst Ofgem has asserted its authority in applying sanctions, for this consultation it does not seem to have taken on board its own stated commitments with regard to:

- a. The consultation timescale
- b. The duty to undertake Impact Assessments for every important policy proposal – without which it is difficult/impossible to determine whether Ofgem's options and variations offer value for money, or greater value for money than the existing process.

2. Do you have any comments about the overall tone and content of the report?

EAS is disappointed that Ofgem appears to be undertaking this consultation process on the basis of concerns triggered by anecdotal feedback and without any real indication of what evaluation of redress projects has been carried out to date. Again, this makes it difficult/impossible to determine whether Ofgem's options and variations offer value for money, or greater value for money than the existing process.

3. Was the report easy to read and understand, could it have been better written?

The consultation was easy to read and understand.

4. To what extent did the report's conclusions provide a balanced view?

EAS understands that Ofgem does not want to be detracted from its core work. Other than this, it is difficult to understand Ofgem's rationale and justification for a) this consultation and b) committing to a preferred option within the consultation.

5. To what extent did the report make reasoned recommendations for improvement?

Again, it is difficult to understand Ofgem's rationale and justification for a) this consultation and b) committing to a preferred option within the consultation. Without any real evaluation or Impact Assessment EAS does not consider that Ofgem offered reasoned recommendations. Nor in reality did Ofgem clarify what improvements there would be.

6. Do you have any further comments?

Ofgem 'consulted' various stakeholders prior to publishing this consultation. However, key Scottish stakeholders seem to have been omitted. For example The Charity Commission whose remit does not include Scotland was part of the process, but not OSCR?