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Energy Saving Trust consultation response: Voluntary redress payments (Ofgem)

Energy Saving Trust is pleased to respond to Ofgem's consultation on the allocation of voluntary redress payments in the context of enforcement cases.

Energy Saving Trust is the leading, impartial sustainable energy organisation. We work on behalf of governments and businesses across the UK providing services in the area of data, assurance, grant and loan administration, consumer engagement and advice.

For the Department for Business, Energy and Industrial Strategy (BEIS) the Energy Saving Trust delivers the telephone-based Energy Saving Advice Service in England and Wales. We also undertake other research and awareness-raising work for the department on a project-by-project basis. Prior to the coalition government, for over 15 years, the Energy Saving Trust ran national energy advice services as a grant-funded organisation.

In Scotland the Energy Saving Trust is a principal delivery partner of the Scottish Government for home energy efficiency. We run comprehensive local and national advice and support programmes.

Public engagement on energy is at the heart of our work. In total each year the Energy Saving Trust handles just under half a million energy efficiency advice calls on behalf of UK and Scottish governments. Energy Saving Trust has a unique relationship with the public around energy saving and renewable energy and our response reflects that.

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Key points to our response

- We welcome the approach and actions that Ofgem is looking into as part of this consultation and are encouraged by the underlying principles being proposed. All options being looked at will increase the benefits going to energy consumers, as recognised in the document.
- To ensure that voluntary redress payments deliver maximum benefits to the consumer we strongly believe that:
 - Payments need to be allocated in an open bidding process that takes place periodically.
 - The redress allocation process should be managed by an independent organisation (a DAF, Ofgem trust or other) with final decisions being made by Ofgem.
 - Companies under investigation should not benefit in any way from making voluntary redress payments.
 - A payment should not go to a trust or charity set up by and/or including the name of the company responsible for the breach but these trusts should not be excluded from the scheme altogether.
 - Payments should be linked to the nature of the breach and target vulnerable consumers as much as possible.

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 would first like to acknowledge that voluntary redress payments have delivered significant benefits to consumers to date, securing over £20m for charitable organisations in 2015-16, as stated in the consultation document. We are pleased that Ofgem plans to continue with the payments and that it is looking at improving the process to maximise benefits for consumers, an approach we strongly support.

In response to this question, yes, we agree with the proposed objectives for the allocation of voluntary redress payments. We think they offer a strong basis on which to make the process work in the best possible way and we are very encouraged that Ofgem is taking these steps.

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?

Our only suggestion would be to include an extra public reporting objective, whereby Ofgem publishes details of the schemes receiving payments and select monitoring and evaluation findings. This would

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improve oversight of the scheme by consumer bodies and the third sector but may also prove useful for other recipients and potential future recipients as it could help them improve scheme design and/or delivery.

We think Ofgem's approach needs to include the following principles (as a minimum and on top of the current principles):

- An open, transparent bidding process that takes place periodically (potentially biannually or annually) and is accessible to a wide range of potential recipients.
- Charities or trusts established by companies under investigation and/or whose name contains a reference to the companies should be precluded from receiving payments.
- Recipients (direct or indirect) should be told that the money they receive is a result of enforcement action, who the enforcement action is against and why.
- Recipients providing regular monitoring and reporting on the impact of funding received.
- Payments should be linked to the nature of the breach and target vulnerable consumers as much as possible.

We think that having an open, transparent bidding process is a crucial principle to introduce and we believe that in order to achieve this the process should be managed by an independent party (DAF, Ofgem trust or other), with strong oversight from Ofgem.

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 do not feel that this approach fully delivers on the proposed objectives. Although we broadly support the additional principles (as explained in response to question 4) we are concerned that they are not wholly compatible with option 1. We are sceptical of having energy companies make the final decision on where their payments should go and believe that to deliver maximum benefits to the consumer the process needs to be open and transparent. In order to do so the process needs to be run by an independent body. We believe the best way to do this is to separate companies under investigation from the allocation process as much as possible.

There is also a risk that it becomes very difficult for smaller charities to bid into schemes if the process is still managed by energy companies. This could create a situation whereby each company runs its own bidding process at different times making it difficult for smaller charities to gain access. The work required to monitor energy companies throughout the year and be ready to put together a relevant bid

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could represent a significant barrier for smaller charities (please refer to our response to question 8 for more detail on this). For the bidding process to be “[...] *open, fit-for-purpose, as simple and straightforward as possible, and accessible to all applications from all suitable charities*” we believe that it needs to be managed by a third party with Ofgem reviewing all proposed recipients and making the final decisions. The bidding process should occur on a set periodic basis, we suggest biannually, providing the stability and foresight for all potential recipients to be able to participate. Please refer to our answer to question 8 for further information on this point.

We are sceptical of the advantages put forward in support of this option. On the first point, (companies considering the harm they have caused) as the companies paying penalties tend to be large organisations there are no guarantees that the same individuals/teams/departments responsible for the activity of the breach are particularly involved in the redress payment process. We would question whether forcing large organisations “[...] *to think for themselves about the negative impact of their behaviour on consumers*” would act as much of a deterrent or punishment and therefore do not see this as a significant advantage to option 1.

While it is true that the similarities with the current system do make option 1 easier to implement, the over-riding priority should be ensuring that long term benefits to energy consumers are maximised.

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 broadly support the proposed additional principles but do not feel that on their own they are sufficient, as referred to elsewhere in our response.

We do not hold a strong view on whether the number of recipients should be linked to the size of the penalty and can see arguments both for and against this proposal.

We strongly support precluding the allocation of payments to charities or trusts linked to the companies under investigation or whose name contains a reference to the company. We believe this is a must for the new scheme and is essential to prevent companies from gaining benefit from paying a voluntary redress payment, in line with the objectives of the scheme. We appreciate that trusts set up by energy companies may have considerable expertise and experience delivering schemes and we do not think that they should be excluded from participating in the redress process altogether. They should however be precluded from receiving redress payments from companies they have links with (as laid out in the consultation document). We believe that for the sake of fairness and transparency they should be required to bid into the process and demonstrate the benefits of their work in the same manner as other potential recipients.

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Having an open bidding process is also very welcome and will be important to target funding effectively and maximise benefits for energy consumers. As in many other areas, fair and open competition is a significant driver to improve cost effectiveness and maximise benefits, providing that the criteria of success are well set out, all potential participants have the same opportunities to bid and there is a thorough monitoring and evaluation regime in place. As highlighted in the consultation having an open bidding process may be difficult with option 1 and is one of the reasons we believe the whole process should be managed by an independent party (DAF, Ofgem trust or other).

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 support using a third party of some kind to allocate, manage and monitor the voluntary redress payment process. Although this may cost more to administer than the current system there could also be economies of scale and benefits from specialisation in aggregating all the processes under one roof, compared to the current system of energy companies having to provide their own resources to manage a redress payment on a case by case basis.

We have no clear preference on whether the managing body should be a third party, a trust set up by Ofgem or any other appropriate body. This decision should be based on the same principles used to determine how the scheme should work as a whole, i.e. who is best suited to manage the voluntary redress scheme so as to maximise benefits for energy consumers.

We think allocation should occur on a periodic basis as outlined in paragraph 4.30 in the consultation document for a number of reasons, including: interest from holding redress funds to cover costs of scheme, greater visibility of the potential recipients meaning a more informed choice, easier for potential recipients to prepare bids and plan workloads and a simpler bidding process for the organisation running it. We have explained our position on this in more detail in response to question 8.

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

We support the proposal to use interest earned from both periodic allocation of funding and from multi-year funding to help cover the costs of the third party. If this is not expected to cover the full costs then we think companies under investigation should cover the difference. This is not fundamentally different from the current process of companies providing the staffing to manage the process but just means that a financial transaction occurs instead.

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

An important principle of the voluntary redress mechanism that Ofgem outlines in the consultation document, and one that we wholeheartedly agree with, is that companies under investigation “[...] *should not benefit in any way from making such [voluntary redress] payments*”.

There are concerns expressed in the consultation document that “*Companies under investigation may not volunteer to make redress payments as they would have no control over where the money goes*” implying that there is some benefit for companies in having a saying over where the voluntary redress payment goes. As such we do not think that the company should have a say in how the payment is being used or any influence over the process. We feel that as far as is reasonably possible, recipients and companies under investigation should be separated. This will help ensure that the process is open, transparent and delivers the most benefits for consumers. For this reason we believe that using a third party, a Donor Advised Fund, a trust set up by Ofgem or a similar body, is the preferable option.

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

To encourage a wide range of organisations to apply to receive redress payments the bidding process should be open and simple, with a standardised bidding process that is accessible to smaller organisations that may have less resources in place.

A periodic allocation would allow organisations to plan accordingly and ensure they have sufficient time to put together the best possible proposals, boosting competition for payments, which in turn would maximise benefits for the consumers. This could cut down on costs to manage the scheme and it would also make it easier for smaller potential recipients to bid. Periodic allocation would also have the advantage of giving the organisation allocating the payments a much fuller picture of available schemes as well as provide a source of funding to cover the cost of running the scheme.

Without knowing more about how frequently redress payments are made it is difficult to say what allocation period is best but as referred to elsewhere in our response, we suggest holding one open bidding process per six month period as we believe this could provide a good balance of:

- Simplicity in implementing the bidding process
- Accessibility for potential recipients (allowing enough time for participants to prepare bids)
- Allocating funds frequently so that they are put to their intended use without undue delay

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A set of detailed guidelines setting out the requirements and explaining how to bid would also be beneficial to assist smaller potential recipients with fewer resources.

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?

We support using an independent body to allocate payments but do not have specific preferences on who that should be. The important point is that the process should be managed by a body that has the expertise and independence to maximise benefits to consumers of the payments but we have no view on whether a Donor Advised Fund or other third party, or a trust set up by Ofgem is best placed to do that.

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

If Ofgem is unable to secure additional funds from the government to set up and run a charitable trust we do not think that it should have to cover the costs itself, as this would take away from Ofgem's core business, as outlined in the consultation document. In this instance the Ofgem trust could be funded in the same way as a third party, i.e. a mix of interest earned through periodic allocation of payments and interest from multi-period funding payments, with the rest being covered by companies under investigation.

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 do not think that this is the best use of redress payment funds. It goes against one of the key objectives of the payments, which is to link recipients/projects supported to the harm created by the breach and to do so in an open, transparent bidding process. In addition, we believe that schemes such as the Big Energy Saving Network and other outreach projects should be funded by BEIS: outreach, encouraging switching and supporting vulnerable consumers are key parts of the department's remit. We do not feel that using redress payment funds to undertake activity that DECC/DBEIS should be funding is appropriate. Doing so would raise a lot of concerns around the additionality of the redress funding and the role of the department. In addition, as raised in the consultation document, the

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unpredictability of payments would make it difficult for government schemes to optimally allocate the funds. We believe redress payments should go to schemes and programmes designed specifically to make best use of them.

CHAPTER 6: Overall view

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

We think that option 2 is the best way forward although we do not hold strong views on which body specifically should manage the allocation process. We agree with the principles proposed by Ofgem and believe that an independent body responsible for the redress payments, with allocation occurring on a bi-annual basis, is the best way to achieve them.

An independent organisation running an open and transparent periodic allocation process (we suggest biannually) ensures that all redress funds go to the schemes that will deliver maximum benefits for consumers. This approach will have a number of benefits, as recognised in the consultation, including:

- The scheme will be accessible to a wide range of participants
- Payments will be allocated in a transparent way with independent oversight, improving confidence in the process
- There would be much less likelihood of companies benefitting from making payments
- Periodic allocation will help cover part or all of the costs of running the payments process
- Companies under investigation will not have to devote their own staff to the process, making it simpler for them
- The body running the scheme will be able to develop specialised expertise thus improving allocation choices and oversight
- Fewer resources will be required from Ofgem

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).

No comment.