



By email only

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Dear Kieran,

Allocation of voluntary redress payments in the context of enforcement cases - consultation

Thank you for the opportunity to comment on Ofgem's proposals for the allocation of voluntary redress payments. npower's views are provided in the attachment and are not confidential.

In summary, these are that we support continuation of the present process (option 1) in order to maintain the link between the supplier and the allocation of redress. The process could be improved by the extension of timescales in settlement agreements, which would also allow scope for the use by suppliers of independent third party organisations, to help manage bidding for funds by smaller charitable organisations, and their subsequent selection.

Please contact me if you would like additional information or to discuss any of the points.

Yours sincerely,

Gerald Jago
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npower's comments

Allocation of voluntary redress payments in the context of enforcement cases - consultation

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

Yes, we support the primary objective: 'to maximise the long-term benefits for energy consumers by ensuring that funding is well targeted'; and the subsidiary principles of targeting consumers in vulnerable circumstances, including geographical spread. Clearly, the targeting of vulnerable consumers will have significance only in the allocation of domestic redress; and it will be necessary to consider additional principles for dealing with cases involving non-domestic enforcement.

However, we would ask you also to consider the points outlined in the paragraphs below:

- there is a potential conflict between the primary objective and the subsequent expression of how to achieve this that could put the primary objective at risk. Consumer redress must have the customer at the heart of decision making, rather than, as seems to be described in the document, focussing decision making on the charities;
- to drive effective redress, the responsibility for identifying charities, identifying projects and deciding allocation should sit with suppliers (who are experts on energy consumers) endorsed by the Energy Regulator, rather than with charity professionals. Option 2 (the third party approach and currently Ofgem's preferred option) removes responsibility from energy suppliers and risks diluting the purpose of enforcement action, outlined in paragraph 1.4, and decoupling the necessary strong and tangible link between the harm and the recipients of the redress. Where this is the case then the fairest and the most economically efficient allocation of any funds may be through central government;
- the existing provision for excluding energy suppliers from benefiting from redress clearly defines the position in regard to using redress activity in marketing and PR activity, and Ofgem holds the responsibility to approve projects where there may be a conflict with this provision. If it is the intention to propose a blanket exclusion from future redress programmes for activities that could provide an important measure of relief to the vulnerable, that would be unwarranted. Rather, support should be decided on a case by case basis, with the benefit to consumers measured in proportion to any collateral or indirect benefit to energy companies (for example, through debt relief or ECO programmes);
- appropriate monitoring and reporting is an integral element of the redress programme, but to be effective it needs the active collaboration of the funder; the Ofgem objective, which is to avoid over-burdening any of the parties, contradicts this requirement for effective monitoring. The advantage of the current approach is that energy suppliers provide an independent overview of the programme of work to monitor progress to delivery.

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?

Yes.

The approach does not identify, reflect and learn from the experience of the current process. We believe that, with minimal effort, the current process could be adapted to achieve the aims of this consultation, whilst maintaining existing benefits. In particular, at present the contractual requirements of the settlement agreement drive speed over transparency. Resolving this could in turn address concerns raised by charities and third parties over access to redress funding.

To achieve the primary objective, the consumer must be at the heart of decision making; the aims of the benefits being sought must be predetermined prior to engaging with the charities; and the relationship with the charities receiving the money must be contractual in order to monitor and maintain progress towards delivering the benefits effectively. Charities are a delivery mechanism to achieve the objectives of the redress payment; the payment is not a charitable donation, and the energy company continues to be the responsible party.

Defining a future process on the basis of access to funding risks resulting in options weighted towards the interests of the charities seeking a share of funding, rather than the core objective, which is to make redress to energy consumers. A dilution of the customer perspective has the potential to result in an imbalance of piecemeal, short-term initiatives, dissipating the overall value of redress, rather than sustainable, potentially life-enhancing solutions. As a by-product it also transforms the responsibility of energy companies, which is to understand the issues; and turns redress into a charitable donation activity.

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?

Option 1 is our preferred approach of those proposed; with enhanced principles, it is the more rounded solution from an energy company perspective, and arguably the better outcome for consumers. The following comments are for consideration:

- A clear understanding from Ofgem is required on the benefits it is focussing on achieving through redress:
 - Numbers of people reached?
 - Numbers of projects undertaken?
 - Impact on customers?
 - Breadth or depth?
 - Relevance to breach?
 - Value for money?

Current proposals appear to address a limited range of criteria as either/or options, whereas a blend of these criteria deliver real benefits to customers and learnings for the energy companies. The visibility that links the breach to redress action and remedy should, as part of redress, support the raising of consumer confidence in both the

energy business and subsequent participation in the energy market post redress activity.

- Whilst we agree with the issues raised in paragraphs 3.8-10 in relation to companies not being able to benefit from energy-related charities and trusts, there is a need to define further what constitutes a benefit, beyond positive publicity; for example, debt relief may be perceived as a benefit to the supplier, but the benefit to the customer is significantly greater in terms of the wider social impact of debt relief on vulnerable and financially stretched customers, than the collateral benefit to suppliers.
- The transparency of the selection process is inhibited by the construct of the settlement agreement, its timelines and the prospect of further financial penalties, and the required geographical spread. It should be possible to reconsider these in order to make this process more effective.
- Voluntary redress provides an opportunity to make a real difference through investment in major programmes of work that otherwise may go unfunded. By the scale of these programmes, they are usually within the remit of national organisations, rather than smaller charities. There is a risk, in too much prescription, of increased costs for reduced value, particularly in monitoring of multiple small projects.
- Linking the number of projects to the size of penalty might deliver more diversity in charitable recipients but will not necessarily deliver greater or wider benefit to the end consumer, which is the stated principle of redress. Balance is needed between the number of projects and the ability to deliver: are funds to be utilised for local crisis management or will they bring change and lasting value through investment in long-term change? Smaller charities will provide an opportunity to pilot and test new initiatives but will also by definition be limited in their reach and scale. Clear criteria are needed to assess how redress objectives are met through multiple small projects.
- Defining the number of charities based on size of redress is too prescriptive, and is focussed on charities helped, not on consumers; this potentially could change the nature of redress. Selection criteria must be outcome-based in order to drive consumer value.
- An open bidding process is not feasible under current conditions defined in the settlement agreement; therefore, its introduction would require a review of the conditions of the settlement agreement. It will not work while financial penalties are attached to a timeline that is insufficient for the process. Open bidding should be available for projects/organisations of all sizes.
- Greater transparency in the process would be welcome, but would require clear objectives and it will take longer to reach agreement on redress projects. The ability to deliver benefits should be contractual but this too will take additional time.
- Effective monitoring requires overall programme control to be retained in order to deal with any underperformance. For major projects this is built into the project plan and

working with the supplier ensures progress to the plan and delivery of benefits. This approach is less viable with multiple smaller projects that receive a one-off upfront payment, and consideration will need to be given as to how benefit delivery is assured.

- As a principle of fairness, managing multiple small projects is significantly more resource intensive than a few high quality projects, and therefore more expensive.
- Sharing information through Ofgem is easily managed by posting on the website. The reporting from suppliers should be self-supporting and require little intervention once a format is agreed with Ofgem.

In summary, the advantages of the present process are:

- o rehabilitation - working on big projects that deliver real value also helps to shape energy innovation delivering longer term value;
- o engagement and collaboration with energy suppliers supports cross fertilisation of ideas and establishment of holistic solutions to customer issues;
- o the energy companies are the experts in the needs of energy consumers. They have significant experience in working with third parties to research, develop and deliver initiatives to support consumer needs;
- o suppliers (and their third parties) have wide reach across communities throughout the UK to maximise the impact of investment in redress activity; and
- o the experience already gained from previous redress programmes will inform and support immediate transition to a revised model.

Question 4: What are your views on the possible additional principles outlined in 'Option 1: Current process with enhanced principles'? Are there any further additional principles that would help meet our objectives?

All energy suppliers will manage external relationships involving multiple contacts across the charity sector and with interested stakeholders, through existing obligations and as a fundamental way of doing business. Contrary to the view implied in the consultation, they therefore in fact have a great deal of knowledge of the charity sector; but even if this were not the case, redress is about funding projects relevant to the needs of energy consumers and not about supporting charities.

A bigger barrier to the current and any other option is the settlement timeline that drives rapid selection of projects rather than the opportunity to review a wide range of opportunities before final selection. Our understanding from our current work on redress is that suppliers often have their choice of projects secured by the time the settlement agreement is signed, in order to meet the Ofgem timeline and to avoid further penalties.

There is therefore a conflict between the Ofgem goals of quick resolution through the settlement process, and a bidding process, which requires adequate time to deliver. In principle, agreement for charitable redress within the settlement agreement delivers a rapid resolution for Ofgem. The conflict between rapid dispersal of funds and the time taken for transparent bidding for high quality outcomes needs to be resolved. High quality outcome should be the priority focus.

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?

Option 2 is not supported.

In our view this option is charity centric, not customer centric. The purpose of redress is to focus on the specific needs of energy consumers; this must be the primary aim of any voluntary redress programme, otherwise it becomes a platform for charitable donation.

This option effectively absolves the energy supplier of responsibility for making redress, and becomes a charitable donation run by a third party, which in itself carries a potential risk that benefit is achieved by the supplier, as the money is divorced from source and becomes viewed as a charitable donation. As a consequence, we believe messaging might become difficult to manage from an Ofgem perspective.

Monitoring of outcomes will be problematic as the owner is a third party, the funds are widely dispersed and there will be no overall accountability for an audit trail of benefit delivery.

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

If Ofgem chooses this route, costs must be met from the Redress funding; as under this option the supplier does not own the responsibility for managing costs.

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

Under this option (option 2) company involvement would have little meaning as it does not own the relationship and/or have responsibility for the third party; it would be time consuming and potentially drive little value. The use of separate third parties risks conflict between the energy company, as expert, and the charity. Therefore, if this option is chosen the organisation should be completely independent.

Alternatively, these difficulties could be overcome if the third party were to form part of the process under the control of the energy company as a variant under option 1.

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

From our own experience, npower’s preference of model would be a variant of option 1, involving a Donor Advised Fund to support the management of funding, and to run a small grants process using a proportion of the redress funding. This would enable the smaller charities that approach suppliers to bid for a share of funding, against clear criteria for support. A panel of advisers would make decisions on awards and provide opportunity for a blend of major projects and local initiatives. However, it would only work effectively with an amendment to the timescales allowed under the present settlement agreement.

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?

The perception of an approach involving a charitable trust set up by Ofgem would be one of a potential conflict of interest and loss of objectivity. It could open up to challenge any enforcement decisions and penalties applied by the Regulator.

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

If Ofgem chooses this route, costs must be funded from Redress payments and not be additional.

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?

This could be acceptable in principle but it could also represent the same conflict of interest in regard to generation of funding as with the Ofgem charity. There is also a risk that redress replaces funding that would have been provided from other sources, thus reducing overall investment. The aim of redress should not be to replace funding to projects or the charitable sector.

Any charity/project benefiting in this way requires careful consideration for neutrality and fairness.

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

Of those proposed, we consider that option 1 is the preferred option. It is the responsibility of energy suppliers to make redress, and energy companies are closest to the issues customers experience. Together with the detailed understanding of how the energy industry works and the barriers to change that may need to be addressed, they are best placed to source and propose projects that reflect the requirements for redress.

Apart from the obvious problem with option 2, of ensuring the suitability of the third party, this would be tantamount to establishing a new welfare system with neither the redress offset benefits of direct hypothecation by the supplier (directing the spend as close to the harm as possible) nor the efficiency of the “no hypothecation” principle of HMRC.

The Ofgem charity option would also introduce the additional difficulties of selecting the panel, agreeing its terms of reference, ensuring appropriate governance and monitoring adherence to that.

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 believe Ofgem should consider a variant of option 1, enhanced with revisions to the timing of the settlement agreement; this would enable small grant making capability as well as large programmes of work, with suppliers having the option of using a Donor Advised Fund as support.

This has the advantage that it provides greater transparency and opens up opportunity to a wider net of charities, without absolving energy companies from ownership and responsibility. It enables contractual management of the delivery of benefits, and supports the opportunity for delivery of intangible benefits such as gaining greater insight, leading to innovation opportunities to improve the customer experience.

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