

Ofgem Consultation on Allocation of Voluntary Redress Payment

August 2016

This response is from the Trustees of The ScottishPower Energy People Trust.

Background

The ScottishPower Energy People Trust (SPEPT the Trust) is an independent charity established to help end fuel poverty in Britain, Charity No. SC036980. The Trust provides grants to registered charities throughout Britain that help people whose lives are affected by fuel poverty.

Our charity was established in response to research commissioned by ScottishPower (SP) in 2005 and supported by Energywatch and Citizens Advice and was welcomed and commended by Ofgem. The research conducted by Quaestor showed that establishing a trust fund was preferable to a social tariff and that funding should only be available to trustee intermediaries and not directly to individuals.

Since our formation in November 2005 we have provided over £14 million to 325 projects run by grass roots organisations that help people who are on low incomes, live in poor housing, suffer ill-health or for other reasons are in fuel poverty. Over the last decade the work we have funded has helped 1,655,429 people throughout Britain and resulted in an increase in household income of an amazing £77m. In addition, over 400 jobs were created and over 400 volunteers supported these organisations.

We are funded by donations from Scottish Power (including recently some voluntary redress funding) and voluntary donations from independent supporters.

Our administrative costs are low. In 2015 these costs were £35k on statutory compliance, governance and administration against total grants awarded of £1.1m keeping our costs to a minimum means that the vast majority of funds go to those who need it most. The administration costs for the Trust constitutes 3.18% of its total funding. This covers audit fees, publication of annual report, it does not account for any wages or remunerative payments to the staff (which are paid directly by ScottishPower) or to the trustees that provide their time free.

We do not restrict any of our funds to SP customers and we do not fund individuals. A summary of the Trusts grants criteria and application process is attached at Appendix A. Decisions to award funding are made independently of ScottishPower by an experienced Board of Trustees who have a range of relevant skills and experience and a particular interest in fuel poverty. A matrix showing the relevant skills and expertise is attached at Appendix B.

Response

General Comments

- We fundamentally disagree with the options presented and remain concerned that Ofgem appears to be determined to move to a model which would increase administrative costs and thereby reduce the funds available to support charities

- working with people in fuel poverty. Replacing the existing thoughtful work of the Trust with a tick box exercise is a seriously retrograde step
- There is no evidence that the current arrangements are not working well and no rationale is offered for the wholesale changes proposed. When asked for a reason for proposing changes, Ofgem said that they were acting on anecdotal statements about reputational benefit from sources that wished to remain anonymous. This is not a sound basis on which to make sweeping policy changes
 - The proposals would explicitly exclude energy company named charities, because of perceived but not evidenced reputational benefit to energy companies. This is despite the fact that the Ofgem guidance from December 2015 specifically prohibits energy companies from deriving benefit, including positive publicity, from voluntary redress payments. Attached is appendix C showing the PR coverage for the 2015 – 2016 year these are projects funded directly by funds received from ScottishPower and not subject to the rules that relate to voluntary redress payments
 - No consideration has been given to the possibility that voluntary redress payments might reduce or cease altogether. In a climate of uncertainty, the establishment of an expensive and dedicated grant making infrastructure seems ill advised.
 - The consultation paper appears to be founded on an incomplete understanding of how charities operate and are regulated
 - We urge Ofgem to reconsider their proposals and include energy company named charities with a re-statement of the caveat that the energy companies do not glean any positive PR visibility or other benefit as a condition to funding. In the absence of any evidence that this rule has ever been breached, it seems likely that such an approach would be effective and sufficient. Should Ofgem at any time believe that existing charities set up by the utilities are bringing positive PR to the companies who have been subject to fines then it is for Ofgem to enforce their guidance.

Specific Comments

Our response to the specific questions and statements contained in the consultation paper is set out below. Our response follows the format presented in the consultation paper.

Q1 Do you agree with our objectives for the allocation of voluntary redress? If not, please explain why.

- The Trust agrees with the objective of helping energy consumers, particularly those who are in fuel poverty/vulnerable, and has worked towards these goals since it was founded 11 years ago. However, the Trust does not agree that any of the options Ofgem presents are in line with the achievement of this objective
- The primary objective (in para 2.3) is stated as “to maximise the long term benefits for energy consumers by ensuring that funding is well targeted”. That seems a sensible objective and paragraph 2.4 sets out how this would be achieved. However, all of these approaches are currently features of the way in which the Trust already operates. Our funding goes to charities and is targeted on vulnerable people. Our Trustees have strong expertise in energy efficiency, fuel poverty, grant making and charity practice. Our bidding process is open, objective and transparent and we publish our guidelines and details of the successful applicants on our website. Our award decisions are made after a rigorous process of screening, scoring and discussion by Trustees. The operation of the Trust is completely independent of ScottishPower which does not have (nor seek) any influence over our decisions

- Paragraph 2.2 talks about maximising consumer benefit and an appropriate geographical spread of benefit but nowhere is it explained what this is, how that would be achieved or how it would be an improvement on current approaches
- Para 2.5 states that the changes (unspecified) will increase the number and spread of recipients. However, this seems unlikely as all of the options would be more expensive than the current arrangements. Where is the evidence for this assertion? Please see appendix D mapping the trusts work and geographic spread throughout Scotland, England and Wales
- We agree (paragraph 2.6) about the importance of effective monitoring and reporting and EPT already has robust processes for this in place, including holding a retention of 10% of grants which is only released after the beneficiary charity has submitted a satisfactory performance report
- We agree (paragraph 2.7) that companies should not gain positive publicity from the voluntary redress payments. But there is no evidence that this happens at present, so the wholesale changes proposed are unnecessary. Furthermore, we would point out that since energy companies are frequently found to be even less trusted by the public than banks, the Trust believes that any small PR impact which might be gleaned from the voluntary donation of redress payments is negligible. Indeed, the negative publicity from the fine itself has a cancelling effect on any positive attention gained from its donation. Please see appendix C
- We agree that the approach should not be burdensome (para 2.8) but the Options in the paper would place significant additional duties on participants.

Q2 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?

- Any changes to current arrangements should only be made after proper dialogue with the charities (and especially the trusts established by energy companies) that are currently involved in the distribution of voluntary redress payments. They are best placed to identify any areas/approaches which would benefit from change
- One criterion that should be considered when making a decision on Ofgem's forward approach to voluntary redress is those making the grant award decisions should have the knowledge necessary to allocate monies to energy consumers most in need, and Ofgem's approach should definitely aim to utilise existing expertise
- Ofgem's objective in moving forward with an approach to voluntary redress should ensure that there is no bias against any particular charities and that all independent charities are treated in the same way
- Ofgem should ensure that it is taking an evidence-based approach when considering a policy change. There is a lot of evidence on how the current process operates, but this consultation does not make it clear whether there has been a substantial amount of research into the potential effects of the proposed changes
- An additional objective is that the administration of any revised system should cost no more than at present
- One criterion should be that whatever is decided, the system should demonstrate that it is the gold standard for charitable activity and grant making
- The selected approach should definitely avoid the use of a DAF model. This is an expensive option which would reduce the funding available for vulnerable customers.

Q3 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 described as similar to the current arrangements but in actual fact it would be significantly different as it appears to exclude charities or trusts that "were established by the company under investigation and/or whose name includes a reference to the name of that company". But SPEPT was established 11 years ago (long before voluntary redress payments were in use) as part of Scottish Power's commitment to CSR. Most of the funding (80%) received by the Trust over the years has been unconnected with voluntary redress payments. No influence over the grants made from these payments has been attempted by ScottishPower. Indeed, the only stipulation over the use of that funding came from Ofgem
- SPEPT does not view Option 1 as an acceptable option. Precluding SPEPT from receiving any source of money has serious disadvantages for vulnerable people and would prevent a successful charity accessing monies that it is as entitled to as any other independent charity. There is no good reason to exclude SPEPT as it is an independent charity that exists to benefit any and all energy consumers, particularly those who are vulnerable and living in fuel poverty
- The trustees of the charity have a wide range of expertise and arbitrarily excluding the Trust from an income source would disadvantage the fuel poor who the Trust exists to benefit, therefore contradicting the objectives laid out in the consultation document
- The reasons for change seem to be founded on a number of unsubstantiated assertions in Chapter 3, mostly in relation to charitable trusts that have been established by energy companies. Paragraphs 3.8, 3.9 and 3.10 all refer to actions that companies "could" do but no evidence is adduced to demonstrate whether any of these things have actually happened. They are certainly not true of SPEPT. In paragraph 3.10, the suggestion that trusts would provide exclusive information to the energy company is very concerning if it has any basis in practice and we believe such sharing of information is likely to be contrary to charity and data protection legislation
- 3.7 appears to criticise the fact that some charitable recipients may be in receipt of voluntary redress funding from more than one source. This betrays a misunderstanding of the charity sector. Grants may be for different projects or the additional sources may be providing matched funding, a not uncommon approach in the charity sector – and indeed which is encouraged by some funders.

Q4 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?

The number of charitable recipients should be proportionate to the size of the penalty

- In 4.4, it is not at all clear how this would work. A per capita allocation of grant would take no account of the fact that some groups e.g. people with a disability or those whose first language is not English, will require more intensive support than others. The key issue is not volume of recipients helped but the quality and effectiveness of that help
- In 4.5, some sort of formula is proposed. We do not think this is feasible or sensible. See comments on 4.4

- 4.6 is exactly the way in which SPEPT operates. Funds received by the Trust (whether from voluntary redress or elsewhere) are used to fund work to support people in fuel poverty being undertaken by charities in Britain. All projects must include the provision of energy efficiency advice to ensure that the work that is funded has a sustainable long term benefit.

The allocation of voluntary redress payments to charities or trusts that were established by the company under investigation and/or whose name contains a reference to that company should be precluded'

- This additional principle is not consistent with actual experience. Precluding SPEPT from receiving any particular source of income does not correspond with Ofgem's stated aims in 2.4 of the paper in which the stated objective is to help energy consumers, particularly vulnerable customers. The Trust has a wide range of expertise in the area of fuel poverty and has helped over a million energy consumers, many of them vulnerable young people and families, across England, Wales and Scotland. There is no good reason to preclude SPEPT as it is an independent charity that exists to benefit any and all energy consumers, particularly those who are vulnerable and living in fuel poverty
- The assumption that the use of trusts and charities established by the companies will lead to reputational benefit is unsupported by evidence that this has happened. Ofgem has a role in ensuring that the companies themselves do not seek to gain any benefit from donating the payments to the trusts.

An open bidding process should be used to select recipients

- It is unclear whether this refers to the selection of the bodies to distribute the funding or the charities who would be the ultimate recipients. If it is the former, then it would require Ofgem to have the necessary expertise to conduct a selection process. If it is the latter, then that is what SPEPT already does
- 4.10 suggests open bidding takes time. This is true. But the current arrangements mean that SEPT has a continuous process of receiving, screening and approving applications which can be funded immediately. Consumers do not have to wait to receive the benefits of the funding.

Money should be used to support vulnerable energy consumers in vulnerable circumstances with a specific focus on energy related needs

- The Trust agrees with this 'additional principle' and has indeed been giving grants for this purpose for 11 years. For the Trust this is not an 'additional' principle but one that lies at the heart of its mission, as the Trust has existed to benefit energy consumers, particularly those who are vulnerable, since its inception.

Recipient organisations, including direct recipients, should be told that the money they receive is a result of enforcement action

- We do not disagree with this.

Potential recipients must demonstrate they can and will monitor and regularly report on the impact of the money they receive

- 4.13 SPEPT already monitors impact and reports on this publicly. Charities that we fund have to provide performance reports against agreed targets. A 10% retention of grant is withheld until a satisfactory performance report is provided by the grant recipient

- 4.14 appears to suggest that the companies should provide reports on the impact of the use of voluntary redress payments. But that is contrary to the aim of ensuring that companies do not get any reputational benefit from the payments. Once the payment has been made by the company to an appropriate organisation to distribute, the company should have no further involvement
- 4.17 is somewhat unclear. What are the company's proposals to be about? Monitoring reports could be provided by the charity distributing the funds to projects which benefit consumers. The advantages and disadvantages listed are also somewhat unclear and seem to be entirely speculative and not founded on any evidence. Surely the system would allow a reasonably constant flow of grant awards to be made even if there were intervals between payments being made to the grant awarding organisation. A useful parallel might be any funding given by a statutory body to a charity. The funding would be provided in quarterly or even annual payments but the charity receiving the funding would be required to provide a continuous service to its beneficiaries.

Other additional principles

- An additional principle should be that the process is as effective, efficient and as inexpensive as possible.

Q5 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?

- This is the least attractive of all the options. Giving responsibility for the allocation of voluntary redress payments to a third party would result in less money going directly to the fuel poor, as a DAF would charge an administration fee. This is in direct contradiction with Ofgem's stated objective of helping energy consumers, particularly those who are vulnerable. Adding another intermediary only serves to decrease the amount of fine money which can be used to help consumers. In contrast, on average 96% of the total expenditure SPEPT receives has been given in grants since its foundation in 2005
- Option 2 is not a sustainable option. The Trust and Ofgem undoubtedly agree that behaviour leading to fines should be disincentivised – indeed, the fine itself acts as a disincentive. This means that any trust that exists solely to administer voluntary redress payments will have an unstable source of income. The Trust did not accept any fine money until 2011 and out of £15m worth of donations through a combination of obligated spend and fines approximately £3.2m has come from miss-selling fines or CESP settlement. The Trust's approach is sustainable and has been successful for over a decade
- 4.21 A donor advised fund appears to be an American model, sometimes used by wealthy individuals to minimise their tax bill. This is not a good association for Ofgem and likely to lead to adverse publicity. Would a DAF or any single third party have the capacity to screen, sift, assess and make awards in the volume that would be required? Any system that paid staff to undertake this process rather than using unpaid but expert trustees would be bound to be considerably more expensive than the current system
- 4.24 It is suggested that existing third parties, such as those already administering schemes on behalf of energy companies, could administer the scheme. We think this is a sensible option. The process could be designed so that the money doesn't sit with Ofgem or the company. We envisage an arrangement whereby (as now)

- Ofgem agrees with the company the size of the voluntary redress payment. That payment is made to Ofgem and then Ofgem immediately transfers the payment to one or more of the existing energy trusts. Any perceived link between the company and its energy trust is thus broken and the trust would promote the donation from Ofgem as regulator penalty funding. The trust would of course have to ensure that its application process was open, transparent, efficient and that it targeted vulnerable consumers. There would be no distinction made in favour of consumers who were the customers of the energy company
- 4.26 Ofgem should not make decisions about which recipients should receive grant funding. First of all, the role of Ofgem is to regulate the energy industry not to get involved in downstream decisions about which local charity should be funded to work with the fuel poor. Second, Ofgem does not have the expertise to do this anyway. Thirdly, if Ofgem tried to control/influence decisions by, for example an energy trust, it could be deemed to have controlling interest, contrary to charity regulation
 - 4.27 the allocation decisions should be made by the third party (who would not be a DAF)
 - 4.33 and 4.34 These are all approaches commonly deployed by charities which have expertise in grant making. There is no need to set up a new DAF style organisation.

Q6 How should the costs of the third party associated with allocating redress be funded?

- There should not be a third party allocating redress funding for the reasons listed above in answer to question 5
- 4.37 it seems unlikely that administration costs would be as little as between 0.5 and 1.5%. The charges levied by existing trusts that do this work are much higher. The costs of a DAF, which is a commercial organisation, seem likely to be higher still
- 4.38 It is unrealistic, given current interest rates, which may reduce further still, for interest payments on short term investments to cover the cost of a DAF provider. In relation to the LIBOR model, is there an evaluation of that process which could provide learning about costs and effectiveness?
- 4.39 A reduction in the available redress money would be a major disadvantage. Does Ofgem have the powers to levy an additional penalty on energy companies to cover the cost of the DAF fees?
- The advantages listed - in the case of bullets 1,2,3 and 5 could equally be advantages if SPEPT continued in its role. The sixth bullet (reducing the risk of beneficial publicity could be addressed in other ways. The seventh bullet claims an increase in the diversity of recipients but no evidence is provided to back up this assertion
- Looking at the listed limitations. Increased cost is a major disadvantage of the proposed DAF approach. In relation to the Third bullet, there is no control exercised over SEPT at the present as it is entirely free (without influence from ScottishPower) to make grant awards in accordance with its own established criteria which are set out in its Trust Deed.

Q7 Should the company that made the redress payment have an input into the approval of recipients under this option?

- It is not entirely clear whether this question relates to the choice of Third Party or the choice of ultimate recipients. If the former, the energy company in question could have an input so long as it is recommending an independent charity with a proven track record. The Trust exists “for the purpose of the relief of poverty, and in particular fuel poverty, within Great Britain” and as this meets Ofgem’s stated objectives to help vulnerable energy consumers there is no reason why it should not be recommended by energy companies or considered by Ofgem
- In the case of smaller energy companies who have not (yet) established Charitable Trusts, they should be able to nominate one or more acceptable relevant charities for approval by Ofgem. This might include any charity whose aim is to support vulnerable and disadvantaged people who are likely to be fuel poor
- If the question relates to the choice of ultimate recipients, then the company making the redress payment should have no input.

Q8 How can we ensure that smaller potential recipients can bid and are not disadvantaged compared to larger potential recipients?

- We assume that this question relates to the ultimate recipients of grants although, again, this is not clear
- There is no obstacle to funding smaller recipients. SPEPT (like many grant making bodies) already funds a wide range of charities of different sizes. The key is in devising the criteria for applicants
- SPEPT has given grants to a wide range of organisations of different sizes, from £650 to grants upwards of £100,000. To ensure that smaller potential recipients of fine money are not disadvantaged it is important that organisations like the Trust are able to dispense money using the extensive knowledge the trustees have regarding fuel poverty and vulnerable people.

Q9 What are your views on this ‘Variation on Option 2 – Voluntary redress payments to 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 Trust does not view ‘variation on option 2’ as a realistic option and it has a number of deficiencies compared to the existing process
- 4.41 As described, the trust would not be truly independent of Ofgem if Ofgem is to be involved in developing the constitution and have some employees as trustees. It is surprising that in the appointment of trustees, Ofgem (as a regulator) would be contemplating going down a route which would be less than “best practice”. The Charity regulators in Scotland and England and Wales would clearly have a view about the suitability of this
- 4.42 this option would, as noted above, be expensive and would also be a departure from Ofgem’s role. A big disadvantage is the reduction in the redress money available to grant fund charities to provide support to vulnerable consumers
- In 4.44 the consultation states “We consider the key advantage of this variation of option 2 to be that the trust would be solely focused on supporting energy consumers”, but money from voluntary redress payments is already administered to charities that solely focus on supporting energy consumers, such as SPEPT
- 4.45 Agreed. The issue of independence of the trust would be real not just perceived. It would be difficult for Ofgem to deliver this with the impartiality it desires, and would be costly in terms of both time and resources. There would be

a perception that any trust set up by Ofgem would be an arm of government and thus could be intended to accrue positive publicity for Ofgem – precisely the concern that Ofgem has about energy companies

- 4.46 We agree that using an existing third party is the best option. A DAF would not be an existing third party. It has as many disadvantages as Ofgem establishing its own trust
- As with the other options presented by Ofgem, 'Variation on Option 2' is unattractive because it discriminates against the Trust despite it being an independent charity. Again, there is a risk that the expertise of knowledgeable trustees is lost – at the expense of the fuel poor – if Ofgem creates its own trust. This option is not proposing anything the Trust does not already do, but suggests doing it by less expert, less credible means.

Q10 How should the costs of running a charitable trust set up by Ofgem be funded?

- We do not believe that consumers would be well served by the establishment of a new trust. The costs would be significant (and unfortunately no estimates have been provided). The costs should not be found from the redress payments so savings would have to be made in Ofgem's own budget.

Q11 What are your views of the idea of using a 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?

- The recent evaluation of BESN identified some benefits from the work but also identified some deficiencies so it would be hard to justify putting additional funding in to this. Putting funding into other schemes runs the risk that the direct benefit to the consumer is lost
- We believe that the model operated by the Trust allows for flexibility and for applications to reflect unmet need as determined by the trusted intermediaries
- As SPEPT shows, having only received fine money for the first time in 2011 since its inception in 2005, it is not sustainable for a charity or any other organisation to exist purely on fine money as it is an irregular source of income and its future is uncertain.

Q12 Which of the options in this consultation do you think should be used and why?

- None of the options represent an improvement on the current arrangements. They will be expensive and would provide a level of control over funding decisions which would be inappropriate for the regulator and for which it seems unlikely to have the necessary expertise
- None of the options presented provide anything new, such as improved targeting. Indeed, it could be argued that they reduce the amount of funds available to tackling fuel poverty and are thus detrimental to the very objectives Ofgem states it is trying to achieve.

Q13 Should any other option 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).

Alternative option 1

- Keep the current procedure which Ofgem acknowledges in point 1.10 is 'working well'. This would benefit the fuel poor as it will not preclude any charities, such as SPEPT, from receiving any sources of funding which could assist in helping energy consumers, especially vulnerable ones. It will also not reduce the fine money available to help energy consumers by diverting any towards a third party, such as a DAF
- One possible change to this procedure could be to strengthen the condition regarding voluntary redress payments that no publicity is generated for the energy company being fined. Ofgem could stipulate that any beneficiary trust will not undertake any publicity that involves the energy company's name.

- Alternative option 2

- Another model would be to have the voluntary redress payments made directly to Ofgem which would then pass them on to an energy trust. In many cases this would be the energy trust currently undertaking the disbursement of these funds. To be eligible the energy trust must be able to demonstrate independence from the company and to undertake an open and transparent application process, rigorous assessment of applications and monitoring of awards. The Trust could make it clear in awarding grants and publicising grants in Annual Reports and on the website etc. that the funding comes from financial penalties levied on the company /the industry for poor performance. If necessary, the name of the Trust could be amended to remove any reference to the company. The company would not be allowed to claim any credit or good publicity from the payments, even indirectly
- This model would have the benefit of having grant making undertaken by trusts and trustees who have a wealth of experience in this area with considerable expertise in fuel poverty issues and energy efficiency. It would not require the establishment of a new infrastructure and possibly legislation. It would be inexpensive as trustees give their time voluntarily without payment.
- However the Trustees do not favour this option as it adds yet another layer of administration and so complexity to the process. It would continue to place a burden on Ofgem and would need to be paid for by them. It serves no useful purpose.

Alternative Option 3

- Ofgem already require that energy companies get no reputational benefit from the distribution of voluntary redress funding. And there seems to be no evidence that this has actually happened. Nevertheless, this requirement could be supplemented by an additional requirement that, where energy trusts are awarding grants which were funded by voluntary redress monies, these grants should be treated as anonymous by the ultimate beneficiary charities. That way, there would be no possibility of the energy company receiving reputational benefit, even inadvertently. Anonymous grant giving is not unusual. A number of trusts and foundations make that a condition of awarding grants so this would be straightforward to arrange.

- These measures would address Ofgem's concern to ensure positive publicity is not generated for energy companies being fined, whilst ensuring that independent charities like the Trust are not excluded from a potential source of funding.

Conclusion

In conclusion, the Trustees of the ScottishPower Energy People Trust believe the current process of fined companies making arrangements to give funds both directly back to consumers disadvantaged by their misdeed and to charitable bodies working with fuel poor and vulnerable energy consumers works well. It is a process that should be allowed to continue unchanged.