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for energy consumers

Domestic gas and electricity suppliers, consumer organisations, and other interested stakeholders

Email: RetailFinancialResilience@ofgem.gov.uk

Date: 20 June 2022

Dear Stakeholders,

Statutory Consultation: Credit Balances – Strengthening existing Direct Debit rules

1.1 In our accompanying policy consultation 'Strengthening Retail Financial Resilience'[1] we commented on the issues concerning customer credit balances (CCBs) and our proposal for ringfencing CCBs. We noted that we would publish a parallel statutory consultation on a measure ancillary to our core proposal on CCBs. This ancillary proposal concerns the strengthening of existing supply licence rules around Direct Debits (DDs) - and we set it out here.

Previous consultation

1.2 In March 2021, we consulted on two core proposals aimed at tackling the issues we identified at the time concerning CCBs[2]. Alongside our core proposals, we also consulted on strengthening existing supply licence condition (SLC) 27.15.[3]

1.3 SLC 27.15 places the following obligation on suppliers:

> *"Save where a clear and express Principal Term of the relevant Domestic Supply Contract provide otherwise, the licensee must take all reasonable steps to ensure that the fixed amount of the regular direct debit payment is based*

[1] "This letter forms part of a consultation package aimed at strengthening retail financial resilience. More details on customer credit balances can be found in chapter 2 of the policy consultation
[2] Supplier Licensing Review: reducing credit balance mutualisation | Ofgem
[3] The gas and electricity supply licences can be found here: Licences and licence conditions | Ofgem. SLC 27.15 is identical for both gas and electricity, bar their respective terminology.

on the best and most current information available (or which reasonably ought to be available) to the licensee, including information as to the quantity of electricity/gas which the licensee reasonably estimates has been or will be supplied under the relevant Domestic Supply Contract."

1.4 In our consultation last year, we noted our view that the current drafting of SLC 27.15 allows suppliers to accrue excessive CCBs which does not align with the intent of the licence.[4] This can occur in circumstances including where fixed DDs are over-estimated.[5] The is because the current SLC only requires suppliers to set DDs using the best and most current information, *unless the terms and conditions of the contract provide otherwise*, and SLC 27.15 only requires the licensee to take "all reasonable steps" to meet their obligation. We consulted on strengthening the condition by removing these components and therefore making it an absolute obligation. This would mean that domestic customers could expect their fixed DDs to be set using the best and most current information available in all cases, thereby reducing the likelihood of some suppliers accruing excessive CCBs for some of their domestic customers. We also noted how making this change would remove subjectivity and make our expectations clearer.

Stakeholder responses

1.5 We received very limited feedback to this specific proposal when we consulted on it last year. The feedback we did receive was provided by a small number of suppliers who have since exited the retail energy supply market and so we have not commented on this feedback here.

Our revised view

1.6 We continue to believe that suppliers should not be able to use their terms and conditions to effectively derogate themselves from the requirement to set fixed DDs using the best and most current available information which SLC 27.15 currently permits. We also continue to believe that SLC 27.15 should not be an "all reasonable steps" condition but rather an absolute obligation.

1.7 We remain of the view that strengthening the existing requirements will help reduce excessive CCB accrual. This will in turn help to tackle the poor practices that excessive

[4] Please see paragraph 2.14 to 2.17 from page 18 of the Supplier Licensing Review, linked in footnote 2

[5] More detail on this can be found on page 18 of the Supplier Licensing Review Consultation, linked in footnote 2

CCBs help to facilitate. Recent market failures, and the poor practices concerning the use of CCBs that they have exposed serve to further support the need for a strengthening of the rules in this area.

Impact Assessment

1.8 Under the Utilities Act 2005 (Section 5A), we are required to conduct an impact assessment or publish a statement explaining why we do not think one is necessary, where we are proposing to do anything in connection with carrying out our functions and where that proposal is "important". Our guidance on impact assessments explains that a proposal is "important" for several reasons. In line with that guidance, this proposal would be considered "important" if it were it to have a significant impact on suppliers. The guidance also explains that "significant impact" may include where implementing the proposal would have significant costs for industry participants.

1.9 These changes will not have any impact on licensees who already use the best and most current information available to them to set fixed DDs in all cases. We envisage that this change will have a limited impact on those that do not currently set fixed DDs using the best and most current information available to them in all cases. This is because we anticipate it being straight forward for these suppliers to apply the approaches and use the same data sets (including estimation where necessary), they currently use for some of their customers to their entire customer base.

1.10 As such, we have not conducted an impact assessment on this occasion.

Next Steps

1.11 With our sustained view in mind, we are now proposing to proceed with the change we previously consulted on. If we decide to make the proposed modifications, the modifications will take effect 56 days after a decision is published.

1.12 We welcome any views on the draft licence conditions detailed in the gas and electricity notices accompanying this letter by close on 19 July 2022.

Cathryn Scott
Regulatory Director – Enforcement and Emerging Issues
20 June 2022