

Response to Ofgem’s consultation - “Smart Billing for a Smarter Market: Our Proposals”.

2 October 2015

Ofcom's Consultation on Revising the Penalty Guidelines

Ombudsman Services' (OS) response

1. Summary - About OS

Established in 2002, The Ombudsman Service Ltd (TOSL) is a not for profit private limited company which runs national, multi sectorial private sector ombudsman schemes for the communications, energy, property (including being the sole provider for the Royal Institution of Chartered Surveyors (RICS) and one of the three redress schemes approved by the Department for Communities and Local Government (DCLG) for letting and managing agents), copyright licensing, the glass and glazing sectors, the Green Deal, the Asset Based Finance Association (ABFA), reallymoving.com, Which? Trusted Traders and, from October 2015, Parking on Private Land Appeals (POPLA).

We are an independent organisation. We help our members to provide independent dispute resolution to their customers and each scheme is entirely funded by its users (participating companies). Our aim is to raise public trust and confidence in the sectors we work with by providing effective independent redress when problems arise.

We have in the region of 10,000 participating companies. During the last year we received 215,968 initial contacts from complainants and resolved 62,806 complaints. The company currently employs more than 550 people in Warrington and has a turnover in excess of £27 million.

In August 2015 we formally launched our new service for consumer complaints – The Consumer Ombudsman. We have developed a new portal (www.consumer-ombudsman.org) which will help consumers to raise a complaint about a product or service in any sector where there is no existing redress provision. This includes retail, travel and home improvement. The site guides consumers through our process, or signposts them appropriately.

Our complaints resolution service operates once a company's own complaints handling system has been exhausted, and we have the authority to determine a final resolution to each complaint. Our enquiries department handles primary contacts and makes decisions on eligibility. If a complaint is not for us, or has been brought to us too early, we signpost the consumer and offer assistance. Eligible complaints are then triaged. The simplest can be resolved quickly, usually by phone in two or three hours. Around 10% are dealt with in this way. For the majority of complaints we collect and consider the evidence from both parties, reach a determination and seek agreement; about 55% are settled like this. The most complex cases require a more intensive investigation; they may require more information and lead to further discussion with the complainant and the company to achieve clarification. The outcome will be a formal and binding decision. Whatever process is followed there is always a right of appeal and escalation. An ombudsman can issue a final decision in any one of the processes where it is clear that there is no evidence that would require changes to the initial determination.

Our service is free to consumers and, with the exception of an annual subscription from Department of Energy and Climate Change (DECC) for the Green Deal, operates at no expense to the public purse. It is paid for by the participating companies under our jurisdiction – usually by a combination of subscription and case fee. Participating companies do not exercise any financial or other control over the company. OS governance ensures that we are independent from the companies that fall under our jurisdiction.

2. Specific response to Ofgem’s questions

Chapter 2

Q1. Do you agree with our assessment of the risk of estimates and backbills in the smart future? Please provide any evidence you have to support your answer.

Yes, particularly as the rollout starts in earnest. It is inevitable that suppliers will encounter problems for the reasons cited at paragraph 2.1 of the consultation document. It remains unclear whether these will be greater than experienced with standard meters either during the rollout period or in the longer term.

Q2. Do you agree that a time limit on smart backbills is an appropriate response to this risk?

Yes. Managing risk using a time limit will provide greatest clarity across the industry, ensuring that consumers are treated consistently and fairly. A time limit is comparatively easy to communicate and to understand meaning that both suppliers and consumers, even quite vulnerable ones, will be more likely to ascertain when the “Code” should apply. For this reason, the use of a time limit in the existing Code of Practice for Accurate Bills generally works well because it offers comparatively clear standards for suppliers to meet.

In our view, a fixed monetary limit might seem relatively straightforward to understand and to implement but could actually lead to inconsistency in the industry and could potentially disadvantage the most vulnerable customers.

This is because differing consumers may have significantly different consumption habits. Consequently, some consumers might meet the monetary sum quickly while others, who may use much less energy, perhaps due to economic vulnerability, would take much longer to meet the monetary limit even though they may have received estimated bills for a longer period. This problem would be exacerbated if the new “Code” were to encompass microbusinesses.

Additionally, a limit based upon a monetary sum would, over time, likely need to take into account fluctuations in energy prices – necessitating periodic reviews.

Any monetary value based upon a consumer’s average annual bill would, in our view, be overly complex. It would also be potentially prone to error and uncertainty. This is because the supplier would need to have accurate data in order to calculate the “average annual usage”. Assuming that it did have such data, the consumer, who presumably would likely already be in dispute with the supplier, might challenge its accuracy, which could further aggravate matters. Further, even accurate historical data might not be reflective of recent consumption habits (e.g. consumers may have begun to use more energy efficient apparatus or, conversely, may have undertaken building work, etc, which could skew the data available, etc).

Q3. Do you agree with our proposal to implement such a limit via licence obligations? If not, what alternative would you suggest?

No. While the intention may be to provide consistency through licence obligations, they are often open to interpretation and this can result in an inconsistent approach across the industry. The time taken to subsequently update licence obligations to reflect the required behaviour may be onerous and detrimental to the consumer. OS’s preferred approach would be to mirror the existing “Code of Practice for Accurate Bills” for standard meters, either via voluntary arrangements or compulsory membership of a code of practice.

The existing code was put in place following Ofgem’s statement of July 2005 which required suppliers to address the back billing issue by applying a limit of 12 months to backdated charges. Energy UK and suppliers responded to this by introducing a voluntary code. There is no doubt that the Billing Code took time to filter through to all suppliers. Regardless, it has now achieved a status of near equal importance to the licence obligations.

Not all energy suppliers are signatories to the Billing Code but, in our experience, all suppliers adhere to its principles. Although the Code is periodically updated to respond

to industry developments and to reflect changes in supplier and consumer behaviour only signatories have input into these changes. Consequently, while all suppliers adhere to the revisions, non-signatories do not have a voice in their development. It is feasible, in principle, that some consumers may suffer detriment as a result of the non-signatories' limited involvement, though this is not evident within the current Billing Code. Regardless, there may be a benefit to suppliers and consumers in requiring compulsory membership.

As acknowledged above, it did take time for the existing Billing Code to embed across the industry. Even so, in our view, it is likely that a new voluntary Smart Billing Code would be promptly adopted and adhered to across all suppliers. This is because the suppliers are now largely supportive of the existing Billing Code and so would likely view a Smart Meter Code as an extension of the same. For example, when new scenarios are added to the existing Billing Code, it is now the practice of the suppliers to take immediate action to effect the appropriate changes. We envisage that a Smart Billing Code would be responded to in the same way.

It should also be noted that the existing Billing Code is supported in its development by key stakeholders, including the Ombudsman, Citizen's Advice and Ofgem.

A voluntary Code would also complement Ofgem's current thinking in moving towards "Principles Based Regulation".

Q4. Do you have any comments on our proposal for suppliers to publish billing performance data for consumers with smart meters?

Publication of data provides transparency for consumers provided it is clear, accurate and comparable data.

Q5. Do you agree with our proposed treatment of microbusinesses? Please provide details of any reasons why not.

Yes, the smart backbill limit should apply to microbusinesses. There is an increasing recognition that microbusinesses need to be protected with rights comparable to those

extended to consumers. This is because they're often in a similar position to consumers in terms of the resources and expert knowledge they have access to when sourcing goods and services. In our view it is necessary to afford protections to such microbusinesses as they are a cornerstone of economic growth. It follows that the Smart Meter Billing Code should apply to them, perhaps with variations, as deemed appropriate.

Chapter 3

Q1. Do you agree with our proposal for the duration of a smart backbill limit?

It is reasonable to introduce a shorter time limit than the 12 months currently allowed for standard meters. As technology improves, so should the standard of service. A significant factor in the adoption of smart meter technology is that it will largely limit the need for suppliers to issue estimated bills over significant periods of time.

It is possible that the six months limit may be too onerous during the initial stages of smart meter roll out and bedding in period. However, thereafter the limit looks to be realistic.

Whatever timeframe is agreed, we believe it is important that a consistent approach is adopted across all suppliers, in order to better protect all consumers.

Q2. Do you agree with our proposed implementation timescales?

There should be a staged implementation, reducing the backbill limit to an agreed fixed term once rollout is complete. Providing these stages are realistic and achievable then, again, consistency across all suppliers is a key factor.

Q3. Do you agree with our proposed scope of a smart backbill limit? If you disagree with specifics, please provide details.

The definition provided of when a customer is at fault (paragraph 3.15) does not include reference to refusal to pay. If a consumer is using energy but refusing to pay at

all, either due to lack of bills or because bills have been estimated, it may not be reasonable to limit backbilling in full.

Chapter 4

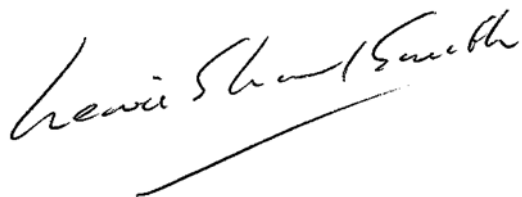
Q1. Do you have any comments on our proposed approach to these objectives (on change of supplier, billing frequency and Direct Debits)?

It is worth noting that there is work ongoing with Energy UK, suppliers and other stakeholders to develop a “Switching Guarantee” to address change of supplier issues and any resulting consumer detriment. As it stands, stakeholders are looking to consider how such a “Guarantee” can best be developed, implemented and promoted to consumers. In our view, such industry action is again consistent with Ofgem’s “Principles Based Regulation” strategy.

Conclusion

Ombudsman Services is more than happy to discuss the points raised in this response with Ofgem further. In the first instance, please contact Daniel Fox, Policy Officer, (email; dfox@ombudsman-services.org, tel; 01925 772 625).

Yours sincerely



Lewis Shand Smith
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2 October 2015