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Dear Dennis,

Statutory consultation on protecting consumers who receive backbills

This submission was prepared by Citizens Advice. Citizens Advice has statutory responsibilities to represent the interests of energy consumers in Great Britain. This document is entirely non-confidential and may be published on your website. If you would like to discuss any matter raised in more detail please do not hesitate to get in contact.

Question 1: Do you agree with our assessment of the consumer harm? Both for domestic and micro-business consumers?

Yes. As set out in the consultation, the Citizens Advice consumer service and the Extra Help Unit (EHU) have both seen increasing cases of back billing being reported by consumers. We have also noted that as the market has expanded, more suppliers are refusing to apply the back billing principle, or are doing so inconsistently. We wrote to Ofgem earlier in the year setting out our concern that the current voluntary protections from back billing are insufficient.

We also agree that micro-business customers are harmed by back billing. These customers share many of the same characteristics as domestic customers, and should receive the same protection from poor practices. Domestic consumers living in properties with a non-domestic supply contract should also receive the same level of protection and support offered to consumers in domestic dwellings. A particular challenge for micro-business consumers, and domestic consumers living in non-domestic properties, is that poor back billing practices can lead to disconnection. It is also concerning that the number of back billing cases dealt with by Ombudsman Services: Energy (OSE) has grown over recent years.

The smart meter rollout makes it all the more vital that back billing protections are formalised. The installation process is an opportunity for consumers to engage with

their energy usage and receive the benefits of smart technology. However, it is often at this point that historic billing issues are uncovered. Protection from large back bills is necessary to help ensure that consumers have positive smart meter experiences, both at the point of installation and on an ongoing basis. In Q3 2017, the average back bill reported by consumers with a smart meter was £1030.¹

We do not consider that Ofgem has properly assessed the harm of back billing to consumers with smart meters. The energy market is changing quickly, and minimum standards should reflect the improved service levels promised by smart meters. The current back billing limit was set by Ofgem in 2005 following the energywatch super-complaint. Since then improved billing systems have been introduced by suppliers and over 7 million smart meters have been installed.

It is widely agreed that consumer expectations will increase once they have smart meters. Indeed Energy UK has said that the “12 month back billing threshold is too long for customers with smart meters”.² In 2015 Ofgem set a policy objective for smart metering of no back bills where the consumer is not at fault.³

Ofgem previously identified that smart meter infrastructure will not, in and of itself, result in consumers receiving accurate bills, and that suppliers also need to improve their processes to ensure accurate bills.⁴ At that time Ofgem argued that a shorter back billing limit would incentivise suppliers to improve their billing processes and deliver accurate bills to consumers with smart meters. The final arrangement for delivering this policy was an agreement between Ofgem and Energy UK that suppliers would voluntarily implement a 6 month smart meter back billing limit following DCC go-live.

Despite progress with the smart meter rollout, back billing remains a problem for consumers with smart meters. BEIS data (included in the consultation) shows that 6% of consumers with smart meters continue to receive estimated bills, while our own data shows that 2.9% of consumers with smart meters go more than 6 months without receiving an accurate bill.⁵ If this billing performance persists when all households have smart meters this would equate to more than 750,000 consumers.

Case studies

“I received a back bill amounting to £6,300. When I asked my supplier about this, they told me the smart gas meter had not been sending meter readings since installation.

¹ Based on figures as reported by consumers

² See [Energy UK's response](#) to consultation on Smart Billing for a Smarter Market.

³ ofgem.gov.uk/publications-and-updates/smart-billing-smarter-market-our-proposals

⁴ See Smart Billing for a Smarter Market: Our Proposals, page 14

⁵ As at June 30th 2017, based on an information request to suppliers

After challenging this, they offered to reduce it by £5,000. I would like to know what my next steps are.”

“I was given a back bill that amounted to just over £1,000. I am unhappy with how this balance has accrued as I supposedly received accurate bills.”

Citizens Advice is disappointed that Ofgem is not planning to place a shorter back billing limit for smart meters in the licence. Furthermore, we were surprised that the consultation document does not even refer to the previous promise by suppliers to introduce a voluntary limit. This rewards energy suppliers for their failure to deliver on their voluntary commitment to deliver a shorter back bill limit. It also means there is no regulation or plan in place to deliver Ofgem’s stated policy objective that there should be no back billing for smart meters.

In the absence of any new licence conditions on smart billing, supplier performance assurance will become even more important. Ofgem previously committed to proactively monitor supplier smart meter billing performance and back billing policies, and to publish information on these.⁶ In its decision Ofgem should set out its plans for this work going forward.

Citizens Advice is also taking a number of steps to understand, and inform consumers about, the smart meter experience. We have now started publishing data on smart meter issues received by the consumer service, which shows back billing is one of the most common complaints we receive from consumers.⁷ We will build on such reporting to continue to scrutinise suppliers, and the wider rollout, to ensure that the benefits of accurate bills are delivered to all consumers.

Question 2: Do you agree with the way we are proposing to implement a back billing limit and the other effects of our proposed licence modification?

We agree that the prohibition should cover charges older than 12 months regardless of payment type. We welcome the clarity on this in the proposed licence condition. This should address cases where suppliers seek to recover old charges by increasing Direct Debit payments or adding a debt to the prepayment meter. This can be confusing for the consumer and prevent them from raising an objection when they are in fact entitled to have the amount written off.

We agree that the back bill limit should only be waived under certain exceptions: where the consumer behaves unlawfully or where the consumer physically prevents access to the meter. However, we think a few points need refining in relation to this threshold.

⁶www.ofgem.gov.uk/publications-and-updates/smart-billing-smarter-market-our-decision

⁷<https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/monitoring-the-smart-meter-roll-out1/>

One concern is that suppliers may blame consumers for issues they were not aware of. It would therefore be helpful for the licence condition to stipulate that, if a supplier is aware a consumer's actions may lead to them losing the right to a back billing reduction, the supplier must clearly communicate this to the consumer so that they have an opportunity to reconsider their actions. This should be in addition to the requirements regarding terms and conditions.

Another concern here is that we have noticed some suppliers do not seem to have a process for accessing properties if they send a meter reader and no one is home. In assessing compliance with the new requirements, Ofgem should ensure suppliers have indeed made a "reasonable attempt" to gain access to the meter, as stated in paragraph 2.19. One possible consequence of this is that more suppliers use warrants to gain access. Ofgem should prompt suppliers on their obligations under the Standards of Conduct to ensure they treat their customers fairly while gaining access to the meter.

Ofgem may also need to clarify expectations in cases where a third party, such as another supplier, is at fault. It is our view is that the new rule should apply regardless of whether the problem is the fault of third party. While such problems are likely to be more complex, suppliers should already processes in place to identify and resolve these issues, and it seems unclear why this should reasonably take longer than the 12 months proposed by Ofgem.

One example of a third party being at fault is when a consumer has been billed by two suppliers for the same period. The current Energy UK code states that the actual supplier can only bill for the past 12 months, but any payments made to the other company should be refunded to the consumer and paid to the correct supplier.⁸ Under the current drafting, it is unclear whether in such cases the consumer would be expected pay any money refunded to them for energy used more than a year ago. Such a case could arise when an erroneous transfer (ET) occurs but is not resolved for a long period of time. Ensuring the proposed new rule applied in such cases would help incentivise suppliers to identify and resolve ETs in a timely manner (as they are already required to do by MRA and SPAA).

We are pleased that the threshold, as stipulated, should prevent consumer detriment in cases where the supplier has billed a building company rather than the property they are supplying. This often leads to a balance building up as the building company isn't paying and hasn't communicated to the supplier that they aren't

⁸<https://www.energy-uk.org.uk/publication.html?task=file.download&id=6202> (page 4)

responsible for the bills. In such cases, the EHU usually argues that the supplier should have identified this as an issue and sent something to “the occupier” to encourage contact from the consumer. It is not unusual for consumers to run into problems identifying who their supplier is and give up trying. Similar issues can also apply to letting agencies. The proposed threshold should ensure that consumers are protected from excessive back bills in such cases.

We agree with the point in paragraph 2.20 that, where a supplier decides a consumer is at fault, they should provide evidence for this decision and communicate this to the consumer. The EHU often has to prompt suppliers to do so. The proposed licence drafting does not appear to reflect this intention, and we would welcome changes to ensure it does. In addition, suppliers should be required to proactively provide this information to consumers when a back bill is issued, not just when a consumer requests they apply the back billing limit. The EHU’s casework experience suggests it would also be helpful if suppliers were required to retain records of this information for a reasonable period.

We agree that the new requirements should be reflected in the terms and conditions of each supply contract and that suppliers should consider their obligations under the Standards of Conduct when doing so. In particular, suppliers must clearly and accurately communicate to consumers the possible consequences of preventing physical access to the meter. They should not, however, overstate the requirements on consumers. For example, consumers may not grant access during the working week when they are not available, as it is inconvenient to do so. The back bill limit will still apply in such cases. Suppliers should make this clear.

We agree with the way in which Ofgem proposes to apply the back billing limit to micro-business consumers. It is particularly helpful for domestic and micro-business consumers to be covered under a single, consistent licence condition. For example, the EHU sometimes receives cases where a domestic consumer is living in a property supplied by a business contract. In such cases it can be unclear what protections apply. Under the proposed drafting, it is clear that they are covered by the same protections regardless of whether they are defined as a domestic or micro-business consumer.

One further concern we have is that the proposed licence condition does not preclude suppliers from insisting consumers continue to make payments while a back bill is disputed. The EHU has seen many cases where the supplier produces an inaccurate bill and does not give the consumer much guidance on what they should

be paying. It is unreasonable to expect consumers to continue paying inaccurate bills or direct debits, over a significant period of time, if their complaint is not being resolved promptly, especially if they are unable to afford what is being asked. While the Standards of Conduct are helpful in this regard, Ofgem should consider clarifying its expectations on suppliers within the back billing licence condition.

Further to this, issues often arise when a consumer has continued to make payments during the back billing period. If the back billing limit is then applied but the supplier retains these payments, the consumer has essentially lost out. The licence does not stipulate whether payments made prior to the back bill limit should be rolled forward and used against correctly billed consumption. This creates a grey area and we are concerned that suppliers may take advantage of this. Ofgem should clarify their expectations on the issue, preferably within the licence condition.

Question 3: Do you agree with our assessment of the costs to suppliers?

Yes. We agree that there are limited cost implications of these changes for suppliers, the majority of whom already apply a 12 month back billing limit voluntarily. Those who don't comply are also likely to have had some of these costs.

We also agree that these changes should reduce some costs for suppliers, by improving billing processes and therefore recovery of energy costs from consumers.

Question 4: Do you agree with the proposed implementation period?

Yes. Given the rise in back billing cases demonstrated in our data it is imperative that these changes are introduced as soon as possible. Most responsible suppliers will already have systems in place to deliver the voluntary back billing principle, and so additional time to implement changes should be minimal. As before, we are aware that some suppliers have been preparing to implement a shorter, voluntary smart back bill limit. This system development work should also facilitate delivery of the 12 month limit.

Regulatory changes should generally not be retrospective, and we recognise that in this case the rules will not apply to bills issued before the change in the licence. However, we would expect all suppliers to apply the limit to bills issued before this date, in line with the voluntary principle that applied at the time and OSE's application of the principle.

The consultation sets out that there have been cases where suppliers have refused to implement decisions on back billing by the OSE. This is completely unacceptable,

given that membership of the OSE includes a duty to apply decisions. We would expect OSE to escalate these cases to Ofgem (as the Competent Authority) or to expel these members, in line with their Terms of Reference. Alternative Dispute Resolution (ADR) is a vital route for consumer redress, and there should be no place in the energy industry for companies that undermine it by failing to comply with the decisions of a recognised ADR body.

If you would like to discuss any aspect of this response further please let me know.

Yours Sincerely,

Alex Belsham-Harris

Senior Policy Researcher