



Making a positive difference
for energy consumers

Gas and electricity suppliers,
energy consumers and their
representatives, and other
interested parties

Direct Dial: 020 7901 7000
Email: CDconsultations@ofgem.gov.uk

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Dear stakeholder,

Modification of the electricity and gas supply licences to introduce rules on backbilling to improve customer outcomes

Summary

- We have decided to proceed with the changes to prevent suppliers from backbilling customers for consumption older than 12 months, subject to certain exceptions including where the customer's behaviour has been obstructive or manifestly unreasonable.
- We have decided to extend the implementation period for suppliers to microbusinesses to allow them more time to change their systems. They have not had a voluntary principle in place (which has been in place for domestic suppliers since 2007) and their voluntary arrangements currently allow for longer timescales than 12 months. To ensure we can protect domestic consumers as quickly as possible, we have decided to keep the implementation period for these consumers unchanged.
- We will monitor suppliers' compliance with the new licence condition and plan to take firm compliance action if we notice suppliers failing to comply.
- Before the licence condition comes into force, we expect suppliers to act in accordance with the backbilling principle and the Standards of Conduct and treat consumers fairly when backbilling.

Introduction

Our principal objective is to protect the interests of existing and future gas and electricity consumers. In our draft Forward Work Programme, we set out that we will work to make sure all consumers receive the standard of service expected given that energy is an essential service.¹ We have discovered instances of suppliers sending bills to consumers for unbilled gas and electricity consumed over 12 months before the bill was received. These bills are a result of incorrect (often estimated) billing by suppliers and can cause financial and psychological stress for many domestic and microbusiness consumers. We think this

¹ Ofgem, Forward Work Programme 2018-19 – consultation, 30 November 2017, <https://www.ofgem.gov.uk/publications-and-updates/forward-work-programme-2018-19-consultation>

falls short of the standard consumers expect to receive from their energy supplier and decided to intervene.

Consumer organisations and the Ombudsman say that catch-up bills (or backbills) are one of the main problems that consumers face. We think it is unacceptable that consumers receive these backbills through no fault of their own. Consumers should rightfully expect their supplier to bill them in an accurate and timely manner.

We have kept backbilling practices under review for a number of years, ever since we received a super-complaint from the consumer body Energywatch (now Citizens Advice) in 2005.² We responded to the super-complaint in 2007 and set out a principle on backbilling.³ Industry responded by setting up voluntary arrangements to protect consumers. Currently, the six largest suppliers for domestic consumers and a number of microbusiness suppliers have signed up to the voluntary standards to protect consumers from high catch-up bills.⁴ There are also a number of suppliers who follow the voluntary standards, without having formally signed up to them. The market has changed significantly since the voluntary standards were introduced.⁵ The voluntary backbilling standards do not cover the whole market, nor are they always followed by the suppliers who have signed up to them.⁶

Our general approach is to rely more on enforceable principles in our regulation of suppliers to allow for innovation and flexibility to the benefit of consumers. However, we have been clear that, where appropriate, we will use prescriptive rules to achieve positive consumer outcomes. Backbilling protections are such an example. Ideally consumers should receive timely and accurate bills, but when suppliers do backbill, we expect them to meet certain minimum standards.

We have decided to modify the electricity and gas supply licences by inserting new Standard Condition 21BA to introduce restrictions on backbilling. This seeks to prevent suppliers from backbilling domestic and microbusiness consumers for energy consumed more than 12 months prior to the date of the bill, subject to certain exceptions including where the consumer has been obstructive or manifestly unreasonable. This will protect consumers from the shock of backbills and strongly incentivise suppliers to engage with consumers to get meter readings. The new licence condition will apply to all meter types and payment methods.

We have carefully considered responses to our November 2017 statutory consultation⁷, and have decided to proceed with the modifications proposed in the statutory notices, other than one change to extend the implementation period for suppliers to microbusinesses. This change will allow suppliers additional time to implement the changes mainly because the current voluntary arrangements have longer time limits (three and four years respectively for electricity and gas).

² See for example our 2016 letter on microbusiness backbilling: <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-back-billing>

³ For more information on the backbilling principle see: <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/who-contact-if-its-difficult-paying-energy-bills/energy-back-billing-your-rights>

⁴ Energy UK, Code of Practice for Accurate Bills (also known as the Billing Code), <https://www.energy-uk.org.uk/customers/energy-industry-codes/code-of-practice-for-accurate-bills.html>. ICoSS and Energy UK, Voluntary Standards for backbilling of microbusiness energy customers, <https://www.icoss.org/uploads/publications/20170401%20Voluntary%20Standards%20for%20Backbilling%20of%20Micro%20Business%20Customers%20ICoSS%20U....pdf>

⁵ In this document, the words "market" or "markets" are used to refer to different segments of the energy sector and are not intended to represent Ofgem's view on the definition of relevant economic markets for competition law purposes.

⁶ For example, backbilling was one element of the penalty notice when Ofgem fined npower £26 million for a number of breaches, <https://www.ofgem.gov.uk/publications-and-updates/notice-decision-impose-financial-penalty-npower-following-our-investigation-its-compliance-standards-conduct-slc25c-slc27-final-bills-and-gas-and-electricity-consumer-complaints-handling-standards-regulations-2008>

⁷ Ofgem, Statutory Consultation, Protecting consumers who receive backbills, 16 November 2017, https://www.ofgem.gov.uk/system/files/docs/2017/11/protecting_consumers_who_receive_backbills_-_statutory_consultation.pdf

Overview of consultation responses and way forward

In our November 2017 statutory consultation, we proposed to introduce a licence condition to protect consumers from backbills. We have included the details of what we proposed in the text further below. The consultation built on our open letter from April 2017 in which we announced our plans to review backbilling protections.⁸

We invited stakeholders to submit their views on our consultation proposals and to express any concerns they had with our recommendation. In particular, we requested their responses to four questions:

- Do you agree with our assessment of the consumer harm? Both for domestic and microbusiness consumers?
- Do you agree with the way we are proposing to implement a backbilling limit and the other effects of our proposed licence modification?
- Do you agree with our assessment of the costs to suppliers?
- Do you agree with the proposed implementation period?

We received 28 responses from a range of stakeholders (domestic and microbusiness suppliers, consumer groups, a third party intermediary and a distribution company). We have published non-confidential responses on our website, summarised responses, and set out our decision on the way forward below.

Assessment of harm to domestic and microbusiness consumers

Statutory consultation position

In our statutory consultation document, we set out that we have identified harm from high backbills or 'catch-up bills' for both domestic and microbusiness consumers.⁹ We supported our assessment with data from Citizens Advice, the Extra Help Unit and the Ombudsman. We also included further evidence from responses to our open letter.¹⁰ We set out that we do not think the current voluntary arrangements are sufficient to mitigate the harm. The voluntary arrangements do not cover the whole market. Only a limited number of suppliers have formally signed up to the voluntary standards. There are a large number of suppliers who voluntarily follow the protections in the voluntary standards (or go beyond them)¹¹, but not all suppliers do. There are also instances of suppliers who have signed up to the voluntary arrangements, but are not following the provisions. This results in poor incentives for companies to achieve positive outcomes and risks poor service and support to consumers.

Stakeholder feedback

Stakeholders offered different views on harm suffered by domestic and microbusiness consumers. While there was broad agreement on the harm to domestic consumers, the views on microbusiness harm were mixed.

⁸ Ofgem, Open letter, notifying of our intention to launch a project to protect consumers from back billing, 3 April 2017, https://www.ofgem.gov.uk/system/files/docs/2017/04/open_letter_backbilling_new_project.pdf

⁹ Ofgem, Statutory Consultation, Protecting consumers who receive backbills.

¹⁰ Ofgem, Open letter, notifying of our intention to launch a project to protect consumers from back billing.

¹¹ Based on the responses to our RFI to suppliers on smart backbilling policies we know that the large majority of suppliers to domestic consumers follow at least a 12-month backbilling limit. The majority of microbusiness suppliers also apply a 12-month limit. Please see the annex to our open letter on backbilling (April 2017) for more information: https://www.ofgem.gov.uk/system/files/docs/2017/04/open_letter_backbilling_new_project.pdf.

Domestic consumers

All stakeholders that commented on our assessment of harm to domestic consumers agreed with our assessment of consumer harm. A number stated that the consumer harm was the reason the Billing Code was introduced.

One supplier said that the detriment identified in the statutory consultation was probably underestimated. However, a few suppliers said we should consider the outcomes of the backbilling case studies we presented and the cases that have gone to the Ombudsman, to see if policy intervention is required, or whether the voluntary arrangements would have sufficed.

A couple of respondents expressed concern that a number of suppliers who were party to the Billing Code were not complying with it. One of these mentioned they have suspected that certain suppliers have deliberately not complied with the Billing Code.

Microbusiness consumers

A few suppliers (including a group representing suppliers) questioned whether there was enough evidence for intervention to protect microbusinesses and suggested that they continue to rely on the voluntary standards.

One respondent argued that microbusinesses are different from domestic consumers and should not receive the same protections, they should be expected to be aware that they need to pay for energy they consume and be in a position to cover unexpected business costs when they arise.

However, many respondents, representing or working with microbusiness consumers, told us that microbusinesses are similar to domestic customers, suffer similar detriment and therefore need additional protection. They argued that microbusiness customers are not more engaged nor better informed than domestic consumers. Citizens Advice also raised that having the same protections is particularly important when domestic consumers live in a property supplied by a non-domestic supply contract. A number of suppliers expressed support for a new licence condition with regard to microbusinesses based on our assessment of consumer harm.

One consumer body, the Money Advice Trust (the Trust) commented on the microbusiness detriment from its experience of operating the Business Debtline service. It stated that microbusinesses often have multiple debts and receiving an unexpected bill could have severe consequences because they have low cash reserves. They supported this statement with research they have carried out with small business owners who had used Business Debtline, which showed that:

- 1 in 3 drew less than £100 income from their business each month
- 82% were affected by stress, anxiety or depression
- 91% had no savings, while 80% had no pensions.¹²

The Trust said that the proposals will encourage suppliers to take regular and accurate meter readings, thus reducing the need for estimated bills and protecting customers from backbills.

A trade body for third party intermediaries, whose members often help their clients with backbilling issues, has told us that backbills can have devastating effects on businesses and their employees. Related to this, the Association of Convenience Stores told us that the

¹² The cost of doing business, Money Advice Trust, 2015, http://www.moneyadvicetrust.org/SiteCollectionDocuments/Research%20and%20reports/MAT_BDL_COST_OF_BU_S.pdf

costs of energy are a vital factor in the viability of convenience store businesses, especially small ones, and that it is therefore crucial that they are protected.

Need for a licence condition

Domestic consumers

For domestic consumers, respondents agreed that tackling detriment from lengthy backbills by implementing a licence condition is the right thing to do. One supplier stated that despite the Billing Code's aim to drive improved standards of performance and to provide a common framework, it appears consumers will not receive consistent service, unless this is included as prescriptive regulation in the licence. Another supplier argued that it is essential that all suppliers follow the same rules to ensure there is a level playing field.

Microbusiness consumers

A number of suppliers questioned whether there was enough evidence for intervention to protect microbusinesses and suggested that we could either rely on the voluntary arrangements currently in place, or use the Standards of Conduct (SLC 0A) to tackle detriment caused by backbilling. One respondent suggested including a requirement in the licence for all suppliers to follow the current voluntary codes. A number of suppliers argued that microbusiness consumers could choose suppliers partly based on their backbilling protections, and that these protections could vary and be part of a supplier's competitive offering.

Several respondents (particularly consumer bodies) countered this by disagreeing that we could continue to rely on voluntary arrangements. For example, the Trust argued that the current voluntary arrangements assume that microbusiness consumers are more proactive than they actually are, particularly with providing regular meter readings, and that the current voluntary arrangements do not sufficiently protect microbusiness consumers because of this. Research commissioned by the Trust on the experiences of small businesses with energy debt showed that the majority of them would not be eligible for backbilling protection under the existing voluntary arrangements, because they did not satisfy the requirements placed on consumers in the voluntary arrangements as they were not able to provide regular meter reads.¹³ The Association of Convenience Stores confirmed that microbusinesses are often pressed for time (20% of shop owners work more than 70 hours a week, for example).¹⁴

Research noted above also revealed evidence of poor customer service and poor communication with small businesses by suppliers, which affects their levels of engagement. The Trust argued that the proposed changes would go a long way to protect consumers as well as improve customer service. It said that catch-up bills can erode consumers' trust in the market, which in turn leads them to disengage further.

Way forward and rationale

We are pleased to see such strong support for our assessment of detriment for domestic consumers. Some respondents raised that voluntary arrangements could deal with the detriment sufficiently and that we should have investigated the outcome of each backbilling case. We disagree that the current voluntary arrangements are sufficient for a number of reasons. Not all suppliers follow the voluntary arrangements and the voluntary arrangements don't protect consumers sufficiently in cases where the fault may not lay directly with the supplier. Also, consumers currently experience detriment under the voluntary arrangements. This is evident from the fact that most of the Ombudsman cases relate to suppliers who have signed up to the Billing Code. Our evidence also shows that of

¹³ Which was carried out by the Personal Finance Research Centre at the University of Bristol

¹⁴ Association of Convenience Stores Local Shop Report 2017, <https://www.acs.org.uk/research/local-shop-report/>

those cases that have a backbilling element, a large number are decided in favour of the consumer.

On microbusinesses, the views were more mixed, but nonetheless more stakeholders agreed than disagreed. Consumer bodies in general agreed with the detriment we had identified. Suppliers were divided, with eleven agreeing with our assessment and four suppliers and two supplier umbrella groups arguing there was insufficient evidence. Based on the evidence of consumer harm set out in our consultation document and responses received, we have decided to introduce backbilling protections for microbusinesses.

In our statutory consultation we set out that a significant amount (about 10%) of Ombudsman and Citizens Advice cases relate to backbilling. We also highlighted the clear year-on-year increase in microbusiness backbilling Ombudsman cases. Furthermore we previously set out that a number of respondents argued that a licence condition is required to protect microbusiness consumers and to ensure consistent application.

We believe the consumer harm presented is strong enough to justify intervention, as catch-up bills can have equally damaging impacts on the employees and owners of these companies. Regardless of whether a consumer is a domestic consumer or a microbusiness, both should receive accurate and timely bills. We disagree with arguments put forward that microbusinesses are fundamentally different from domestic consumers when it comes to backbilling based on evidence put forward by consumer bodies, which set out that both groups share many of the same characteristics. This is supported by Ofgem's own consumer research. For example, a significant amount of non-domestic consumers do not engage with the energy market as they believe it is too complex or time-consuming to find a new tariff or supplier.¹⁵ Switching rates for small and microbusinesses are only slightly higher than for domestic consumers.

Also, for microbusinesses it is especially important to ensure a level playing field across the market. Many suppliers have not signed up to the voluntary arrangements and even within the voluntary arrangements there are different levels of protection. We disagree that backbilling policy is a way suppliers can differentiate themselves and market themselves to customers. We see this as an essential consumer protection that requires consistency across the market.

Arguments that voluntary arrangements suffice are not supported by the fact that consumers have felt compelled to go to Citizens Advice, the Extra Help Unit or the Ombudsman to resolve their backbilling disputes. If the voluntary arrangements were effective we would expect suppliers to resolve issues before they need to be escalated to external parties such as Citizens Advice or the Ombudsman. Nor do they take account of the fact that there are likely to be consumers who have neither the time nor the energy to pursue their disputes and will therefore suffer detriment.

We will consider whether we need to take any further action against suppliers who have signed up to the Billing Code, but who have not complied with it.¹⁶

We therefore have decided not to change our proposal and have decided to apply backbilling protection to both domestic and microbusiness consumers. However, we have decided to give microbusiness suppliers more time to implement the new licence condition. This is mainly because microbusiness suppliers will need to change their systems and processes to accommodate the new 12-month limit, as the microbusiness voluntary arrangements currently allow backbills for up to three (for electricity) or four (for gas) years. Also, based on responses to a request for information we issued in 2016 on smart

¹⁵ Ofgem, State of the energy market 2017, 31 October 2017, <https://www.ofgem.gov.uk/publications-and-updates/state-energy-market-2017>

¹⁶ We have taken enforcement action on this in the past. See for example our case against npower, <https://www.ofgem.gov.uk/publications-and-updates/npower-pay-26m-failing-treat-customers-fairly-0>

meter backbilling policies, we see that more domestic suppliers than microbusiness suppliers currently already have 12-month backbilling protections in place.¹⁷

The way we have decided to implement a backbilling limit and the other effects of our licence modification

Statutory consultation position

In our statutory consultation, we proposed a licence condition with a minimum standard to protect consumers from the shock and financial hardship of catch-up bills. We proposed the following:

- When a supplier issues a bill they can only seek to recover charges for energy consumed in the last 12 months, unless:
 - o the bill was sent before the licence condition came into effect, or
 - o they have previously issued a compliant bill and are chasing previously billed charges, or
 - o the consumer behaves in an obstructive or manifestly unreasonable way.
- The protection applies to domestic and microbusiness consumers, all payment types and meters.
- Suppliers must include backbilling protections in their terms and conditions.

We proposed to provide more consumer protection than currently set out in the voluntary arrangements, by requiring that the consumer has to be at fault by behaving obstructively or manifestly unreasonably. The current voluntary arrangements work on the basis of a supplier at fault principle, which for example means consumers are not protected if the fault lies neither with the consumer or the supplier, but with a third party. In practice, the main difference between the proposed licence condition and the voluntary arrangements is that suppliers are further encouraged to obtain meter readings from consumers to improve the accuracy of their bills.

Stakeholder feedback

For both domestic and microbusiness consumers, respondents raised questions on the way we have proposed to implement the rule. Many requested further guidance from Ofgem on particular points. As a general point, suppliers asked Ofgem to clarify the differences between the voluntary arrangements and the new proposed licence condition.

Obstructive or manifestly unreasonable behaviour

Respondents asked for further guidance on when a consumer can be deemed at fault (due to obstructive or manifestly unreasonable behaviour) and how the proposed threshold differs from the consumer responsibilities set out in the Billing Code. One supplier commented that they thought it made sense to shift to a 'consumer not at fault' principle as opposed to a 'supplier at fault' principle for situations where the fault lay with industry, but not directly with the supplier.

Respondents raised questions about the responsibilities of consumers in a number of situations, but the main point raised was the consumer's responsibility to provide meter readings. Respondents (particularly suppliers) asked how the obstructive or manifestly unreasonable behaviour principle relates to a consumer's responsibility to cooperate with the supplier so they can get meter readings for accurate billing. They specifically queried how the backbilling limit interacts with the obligation in standard licence condition (SLC) 21B.4, which requires suppliers to take all reasonable steps to obtain a meter reading at least once a year (for example: when sending someone round to read the meter but the consumer is not home, or sending consumers multiple requests for meter readings).

¹⁷ Ofgem, Open letter – notifying of our intention to launch a project to protect consumers from back billing, 3 April 2017, https://www.ofgem.gov.uk/system/files/docs/2017/04/open_letter_backbilling_new_project.pdf

Suppliers are particularly concerned about complying with SLC 21B.4, but still having to apply the backbilling limit as the consumer was not obstructive or manifestly unreasonable.

Suppliers also asked for guidance on when a consumer might be at fault in a number of other situations:

- The meter is behind a locked cupboard and the landlord holds the key, which means the supplier can't read the meter
- Fault lies with a third party, not the supplier
- The consumer has not told the landlord they are moving in or out of the property
- The supplier bills the building company instead of the property
- The consumer makes a genuine error reading the wrong meter in a flat with a number of meters in a central area.

A number of suppliers argued that it does not feel appropriate or proportionate (pre-smart meter mass rollout) to ignore the customer's role in supporting timely and accurate bills and direct debit payments through the provision of meter readings. And they said that failure to get a read is often not due to obstructive or manifestly unreasonable behaviour on behalf of the customer, but practicalities. A number of suppliers were concerned that some consumers will try to avoid having to pay for their energy use by not providing meter readings or cooperating with the suppliers, but are not behaving obstructively or manifestly unreasonably as set out in the proposed licence condition and thus qualifying for the backbilling limit.

Many respondents also called for guidance from Ofgem, similar to the Energy UK backbilling scenarios, or factsheets setting out consumer obligations. They asked Ofgem to clarify how our proposal was different from the Energy UK Billing Code.

Payment types

A few respondents raised comments regarding our proposal to apply the backbilling limit to all payment types. One respondent was concerned about recovering charges through direct debit increases and sought clarification on whether they can recover charges older than 12 months by spreading the payments over a year when agreeing this with the consumer. Citizens Advice queried what would happen to payments made via direct debit towards charges when it subsequently becomes apparent that the backbilling limit should have been applied.

One respondent raised concerns about applying debt to a traditional prepayment meter, as suppliers rely on consumers to add the debt to their meter when they top up, and argued that if the consumer does not top up (and load the debt message) the backbilling limit should not apply.

Communication of backbilling rule and its application to consumers

A number of respondents queried how the changes to the backbilling rules should be communicated to consumers in general and individually. A few respondents disagreed that the backbilling rules should be included in the terms and conditions and argued suppliers should be free to decide how to communicate these protections. Other respondents argued that suppliers should not need to proactively communicate evidence when the backbilling limit does not apply. Citizens Advice and the Association of Convenience Stores strongly agreed with our proposals and argued suppliers must communicate to customers if their actions could lead to losing backbilling protection.

Smart meters and length of period

A number of respondents commented on our proposal to implement the 12-month limit for both traditional and smart meters. They suggested that a shorter backbilling limit (six months) would be suitable for customers with smart meters to reflect the higher expectations created by smart meters. Some respondents referred to information from the

Department for Business, Energy and Industrial Strategy, which shows that 6% of smart meter customers still receive estimated bills.

A number of respondents argued that the 12-month limit should be kept under review with the aim to shorten the limit in future, possibly to six months or even an absolute ban on backbilling for smart meters.

Way forward and rationale

Obstructive or manifestly unreasonable behaviour

As set out in our consultation, we think it is appropriate to only make the 12-month backbilling limit apply when a consumer is not at fault. This is in line with our earlier considerations on backbilling.¹⁸ We do not think it is reasonable to allow consumers to suffer financial and psychological detriment of old backbills when they are not at fault. Even if the fault is not directly with the supplier, the supplier is responsible for correctly billing the consumer for their usage.

We set out that we do not intend this principle to require that consumers should be actively involved in the billing process. For example, we would not consider a consumer to have behaved obstructively or manifestly unreasonably if they fail to notice or report that they are being billed on estimates. However, it is our intention that consumers are likely to fall within this exception if the supplier identifies a problem, makes reasonable requests to physically access the meter, and consumers ignore or refuse them. It will be up to suppliers to assess on a case-by-case basis whether the backbilling limit applies. We highlighted a few examples in our consultation of cases where we would consider consumer behaviour to be either obstructive or manifestly unreasonable:

- Where the consumer behaves unlawfully by stealing electricity or gas or not keeping their meter in working order (when a consumer is using their own meter)
- The consumer prevents physical access to the meter (for example by not allowing a meter reader into the home without good reason).

We expect suppliers to keep evidence of the consumer's behaviour if they decide to not apply the backbilling limit because of the consumer's behaviour.

The main concern from suppliers is that the consumer does not provide meter readings, either deliberately or through inaction, which will make it more difficult for suppliers to bill accurately. Consumers have a responsibility to pay for the energy they have consumed. When charges are not paid, they are either absorbed by suppliers or passed on to other consumers through price increases or more limited competitive offerings. This is undesirable for both parties, and consumers (in aggregate) and suppliers therefore both benefit from accurate bills.

Before the smart meter rollout is complete, suppliers will depend on consumers to provide meter readings. However, this is a problem of diminishing significance, as more and more consumers will get smart meters in the next few years. Issues with estimated billing are an incentive for suppliers to install as many smart meters as they can in consumers' homes and businesses.

Respondents have correctly identified that our proposals go further than the existing voluntary backbilling arrangements. We have decided to make sure a higher threshold is met before the consumer will be at fault and the backbilling limit would not apply. The consumer will have to behave either obstructively or manifestly unreasonably, which suppliers need to assess on a case-by-case basis. We do not consider a consumer to be

¹⁸ Ofgem, Smart billing for a smarter market: our proposals, <https://www.ofgem.gov.uk/publications-and-updates/smart-billing-smarter-market-our-decision>

obstructive or manifestly unreasonable when he or she does not supply a meter reading. We expect suppliers to actively engage with consumers when they want to obtain a meter reading or take a meter reading at the property. If consumers do not respond to requests for meter readings, the backstop measure should be that suppliers take a meter reading themselves to avoid billing based on estimates.

We believe this reflects and further clarifies the obligation on suppliers to bill accurately and in line with both the expectation that suppliers need to take all reasonable steps to obtain a meter reading once a year, and the Standards of Conduct. This means that it is in the supplier's interest to put more effort in to obtain meter readings from their customers and have the right processes in place to enable them to do this.

Suppliers have raised concerns that some consumers will try to take advantage of the backbilling protection by being unhelpful (but not obstructive or manifestly unreasonable) and not providing meter readings and thereby avoiding payment of charges. We would expect this to be an issue in very few cases, but if suppliers think the consumer is trying to avoid paying for their energy, they will need to satisfy themselves that the consumer is behaving obstructively or manifestly unreasonably.

Recent data from Citizens Advice shows that a large amount of domestic customers are already receiving bills based on meter reads at least once a year.¹⁹ With data from Q1 and Q2 2017 showing that the median percentage of consumers receiving a bill reflecting a meter reading in the past year was 94.80% (Q1) and 94.40% (Q2) for suppliers with over 5,000 customer accounts. We would therefore expect on average that suppliers will bill based on a meter read at least every 12 months in the vast majority of cases.

This new obligation will incentivise suppliers to further improve their billing accuracy and a few respondents have indeed pointed out that suppliers have commercial and regulatory incentives to bill as accurately as possible. The backbilling limit will also further incentivise suppliers to roll out smart meters to customers to bring an end to estimated billing and associated issues.

In the drafting of the licence condition, we have given ourselves the power to, following consultation, set out further circumstances in which the backbilling limit will not apply. As we have simplified the backbilling protection by specifying narrow exceptions when a supplier is allowed to backbill beyond 12 months, we do not currently feel the need to provide additional guidance. We may do so in future.

Payment types

Suppliers are not allowed to try to recover charges older than 12 months when they have previously not taken any action to do so. They can recover older charges if they are following up a previous compliant request for payment.

A few respondents queried how the backbilling limit applies when the supplier sends a consumer a catch-up bill. One supplier asked whether they could agree with a consumer that the catch-up will be paid over the next 12 months in instalments. This supplier also asked how the backbilling limit applies if the consumer does not top up the prepayment meter and therefore does not add the debt to the meter. We have drafted the licence condition to specifically tackle the situation where suppliers take action to recover charges up to 12 months old. If they act to recover this (referred to as charge recovery action in the licence condition), the backbilling limit will not apply to the same debt at a later point in time. This then allows the supplier to chase the consumer for the charges if the bill is not paid or the debt is not added to the prepayment meter. Also, it allows the supplier to agree a payment plan with the consumer to pay off the charges in instalments.

¹⁹ Citizens Advice, Decision on changes to the energy supplier rating, 17 November 2017, <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/decision-on-changes-to-the-energy-supplier-rating/>

Communication of backbilling rule and its application to consumers

Two suppliers objected to our proposal to include the consumer protections on backbilling in suppliers' terms and conditions. They argued this was too prescriptive, while two consumer bodies agreed and wanted us to include more requirements. We have decided that we have struck the right balance of making sure a minimum consumer protection is set out in the terms and conditions of their energy supply contract, while still allowing suppliers freedom to decide how best to communicate these protections to their customers. This will empower consumers.

While we are not (apart from through the terms and conditions) prescribing the way suppliers should communicate with consumers, we would expect suppliers to further consider how best to communicate these protections to their customers in accordance with the Standards of Conduct. Particularly in cases where the consumer's actions might lead to a loss of backbilling protection or where the supplier explains why they are billing the consumer for longer than 12 months.

Smart metering limit

We have not seen sufficient new evidence convincing us to change our position in the statutory consultation. However, we will keep this under review and consider in future whether or not the backbilling limit needs to be shortened for smart meters. As we have stated before, when the smart meter rollout is complete, we do not expect any suppliers to issue estimated bills to consumers with smart meters. Two suppliers have suggested shortening the backbilling limit for smart meters to six months. There is nothing stopping suppliers from offering a shorter backbilling limit to their customers. We encourage these suppliers to take the lead and reduce their backbilling limit voluntarily.

We are still concerned that consumers may receive backbills when they have a smart meter installed, as an accurate meter read will be taken at that time which could show the consumer has not been billed enough in the past.²⁰ We therefore want to implement the changes as quickly as possible to protect consumers from bill shock when they have a smart meter installed.

Costs to suppliers

Statutory consultation position

We do not expect the proposed changes to impose a significant burden on suppliers. Many suppliers already have the required systems to limit backbilling to 12 months due to the current voluntary arrangements and application of these voluntary arrangements by the Ombudsman.

Stakeholder feedback

Many respondents, including large and small suppliers and consumer bodies, believe that implementation costs will be low or non-existent. They point to the fact that a number of suppliers already apply a voluntary 12-month backbilling limit, and the proposed changes will require minimal system alterations, if any. Other respondents (mainly consumer bodies, and some suppliers) did not comment on our cost assessment.

One supplier said they have invested heavily in system and process upgrades to make sure they could deliver backbilling protections as a member of the voluntary arrangements. They stated that the backbilling principle has existed for a decade, and if suppliers who have not

²⁰ This concern is confirmed by Citizens Advice monitoring data on the smart meter rollout which shows that backbilling is the fifth most common issue with the smart meter roll-out, data from December 2017, <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/>

adhered to this commitment now face high costs to implement this new regulation, they must balance this against up to 10 years of additional income related to backbilling for energy used more than 12 months ago and associated consumer detriment.

Several suppliers disagreed with our consideration of the costs and suggested that they will need to change their systems and processes to comply with the proposed changes. One supplier estimated that the sector would have additional costs of around £60m mainly due to the costs of employing additional meter readers and writing off parts of estimated bills.

Furthermore, a few of these respondents were disappointed not to see an impact assessment of the costs. One respondent wanted clarity on the difference between the proposed changes and the backbilling element of the Billing Code before making an assessment of the costs.

Energy UK stated that costs would likely vary across suppliers based on their particular approach and their systems and processes. I&C Shippers and Suppliers (ICoSS) expects that costs to consumers will rise due to bill write-offs and additional meter reading costs for suppliers.

Way forward and rationale

We have not received much quantitative evidence from respondents on the costs of our proposals. Suppliers have told us that the costs they are likely to accrue will vary from none/minimal to additional costs for system/process changes, additional staff, write-offs and employing additional meter readers. Only one supplier has given us a cost estimate, which does not allow us to benchmark this number across suppliers.

We acknowledge that not all suppliers currently apply the voluntary protections and thus may have implementation costs as we have set out in our consultation document, for example to change systems and automate backbilling processes. Currently the largest six domestic suppliers and 14 microbusiness suppliers have signed up to the voluntary arrangements so they should have the systems in place. On top of this, a large number of suppliers (particularly those supplying domestic customers), adhere to the voluntary standards without being a signatory. This is confirmed by evidence set out in the annex to our earlier open letter on backbilling.²¹ Citizens Advice has told us that most responsible suppliers will already have systems in place to apply the voluntary backbilling principle, which has been in place for over a decade for domestic suppliers.

The Ombudsman also applies the voluntary backbilling protections in cases regarding backbilling for all domestic and microbusiness customers, which means that suppliers who have had backbilling cases with the Ombudsman, must have some processes in place to deal with backbilling. However, these might be manual processes currently which could need automation depending on the number of backbilling cases.

We believe these new protections will lead to benefits to consumers mainly in the form of avoidance of stress related to the reception of large catch-up bills, as we have previously set out in our consultation.

We also believe that introducing a licence condition will strongly incentivise suppliers to make sure they obtain meter readings at least once a year to avoid writing off part of the bill, and to do so in the most cost-efficient way. This will prevent costs associated with write-offs being transferred to suppliers or other consumers through price rises.

²¹ Ofgem, Open letter – notifying of our intention to launch a project to protect consumers from back billing, 3 April 2017, https://www.ofgem.gov.uk/system/files/docs/2017/04/open_letter_backbilling_new_project.pdf

This new licence condition will encourage suppliers to improve their billing systems, which could allow them to recover more debt before it becomes difficult for the consumer to pay the high, unexpected bill. This in turn can mitigate potential implementation costs.

Based on this rationale and the limited evidence we have received from suppliers, we believe that our original considerations on the cost impacts were correct. Suppliers will work as hard as they can to improve billing accuracy and avoid write-offs, and many suppliers already have systems in place to limit backbills to 12 months. However, there may be some costs to change systems. We therefore have decided not to change our view of the costs to suppliers.

Implementation period

Statutory consultation proposal

We proposed to publish the licence modification decision notice in early 2018 with a view that the licence changes would take effect 56 days after that.

Stakeholder feedback

A number of stakeholders did not make any comment or express any concern on the length of the implementation period. A number of respondents did not agree with the implementation period citing the need to test systems or make process changes. A couple of respondents went further and suggested the need for clarity on the differences between the proposed changes and the Billing Code before they could make an assessment. At the same time, they shared their concerns with the quick pace with which we are proposing these changes. In particular, they expressed concern about moving from an open letter straight to a statutory consultation and that this could set a precedent for future licence changes. A few respondents proposed a specific implementation period ranging from six to 12 months. They mainly argued that additional time is required to properly implement system changes for suppliers who do not currently provide 12-month backbilling protection, particularly for microbusiness suppliers as their voluntary arrangements allow customers to be backbilled for longer than 12 months.

On the other hand, nine respondents (including five suppliers) agreed with our proposed implementation period. They pointed to the fact that a number of suppliers already implement the voluntary 12-month limit, so only minimal changes will be required to current systems.

A couple of consumer organisations (representing microbusinesses) expressed concern that suppliers would send large catch-up bills to consumers before the protections are added to the supply licence.

Way forward and rationale

Following feedback from various stakeholders, we have decided to keep the 56-day implementation period for the licence condition. For domestic consumers we are closely following the time limit of the domestic backbilling principle (which has been in place since 2007) and the Billing Code.

Suppliers will also have had experience with this limit as the Ombudsman uses it when deciding on domestic backbilling cases.²² We appreciate that we are imposing a higher evidence threshold on suppliers before they are allowed to backbill beyond 12 months (i.e. the consumer has to behave obstructively or manifestly unreasonably). However, this also

²² <https://www.ombudsman-services.org/sectors/energy/advice-and-cases/energy-back-billing>

simplifies the process for suppliers and consumers as there are fewer exceptions to assess. We therefore believe the implementation period will allow suppliers to adjust systems to implement the simplified threshold.

However, we have decided to amend the licence condition to delay the start of part B of the licence condition by six months (on top of the 56 day implementation period for the licence condition), giving microbusiness suppliers additional time to implement the changes. We have decided to give them additional time for two reasons. The voluntary backbilling principle, set out by Ofgem in 2007, only applies to domestic suppliers and not to microbusiness suppliers. Therefore, unlike domestic suppliers, microbusiness suppliers will only apply backbilling protections if signed up to the voluntary arrangements. This means that there are fewer microbusiness suppliers that currently apply backbilling protections.²³ These suppliers will need to set up their systems to comply with the new licence condition.

Furthermore, suppliers that have signed up to the voluntary arrangements are allowed to backbill microbusinesses for up to three (for electricity) or four (for gas) years. This means microbusiness suppliers will need to adjust their systems and processes and get ready to apply a shorter backbilling limit. Including identifying which customers will need to be protected under the new licence condition compared to the voluntary arrangements. We believe the additional time is sufficient to ensure all the necessary systems and processes are in place.

Two consumer organisations expressed concern at suppliers' billing behaviour before the new backbilling protections will apply to suppliers. Suppliers must not use aggressive tactics to claim outstanding backbill payments before the licence condition comes into force. We expect suppliers to behave in a way consistent with the Standards of Conduct.

Licence drafting

Two respondents suggested that we change or clarify the drafting of the licence condition. One supplier suggested that we make changes to the licence condition to accommodate future tariffs that might not be charged by unit rate or standing charge. They also referred to "any other type of supply charge" not being defined in SLC 1 of the gas and electricity supply licences. We have included 'supply charge' in the licence condition to future-proof this licence condition, in case suppliers offer tariffs that are not based on the unit rate/standing charge structure (as currently prescribed by SLC 22A of the gas and electricity supply licences for domestic consumers). If required in the future we can make changes to SLC 21BA following consultation.

Another supplier made a specific drafting recommendation for changing the 'consumer at fault' test. As we have decided not to change the test, we will not make this change.

However, we have decided to change the drafting to allow a longer implementation period for suppliers of microbusinesses.

Our decision

We have decided to proceed with the changes to prevent suppliers from backbilling customers for consumption older than 12 months, subject to certain exceptions including where the customer's behaviour has been obstructive or manifestly unreasonable. We have decided to allow microbusiness suppliers more time to implement the changes. We will monitor suppliers' compliance with the new licence condition and plan to take firm compliance action if we notice suppliers failing to comply.

²³ See annex to our April 2017 open letter for information on microbusiness suppliers and their backbilling policies.

Before the licence condition comes into force, we expect suppliers to act in accordance with the Standards of Conduct and treat consumers fairly when backbilling.

Anthony Pygram

Partner

Consumers and Competition

**Duly authorised on behalf of the
Gas and Electricity Markets Authority**