

To all licensed energy suppliers

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Email: Retail.Conduct@ofgem.gov.uk

Dear stakeholders,

Expectations for energy suppliers who are dealing with domestic and micro business consumers when undertaking charge recovery action

The purpose of this letter is to remind relevant energy suppliers of the requirements placed on them by supply Standard Licence Condition (SLC)¹ 21BA ('SLC21BA') with respect to charge recovery action, so they apply the relevant consumer protections consistently and accurately.

Based on information we have received from consumer bodies (Citizens Advice, Citizens Advice Scotland, the Extra Help Unit and the Energy Ombudsman), we are concerned that suppliers are not correctly and consistently adhering to SLC 21BA, which sets out the conditions under which suppliers can recover charges for the supply of gas or electricity (the **Backbilling Requirements**). Examples of situations where suppliers may have incorrectly refused to apply the Backbilling Requirements include:

- The customer receiving monthly statements showing their direct debit is insufficient, with the supplier relying on the customer to proactively identify and address this.
- Suppliers sending inaccurate or estimated bills.
- Customers who are on pre-payment meters, as it was incorrectly believed that the requirements are not applicable to this meter type.
- Incorrect billing due to incorrect metering or smart meter arrangements.

As a reminder of Ofgem's expectations of energy suppliers, the Backbilling Requirements protect domestic and micro business consumers from being charged for unbilled consumption over 12 months old, except for where a consumer has behaved in an obstructive or manifestly unreasonable way. The issuance of a bill seeking the recovery of previously unbilled consumption is referred to as "charge recovery action". Situations that may lead to charge recovery action, include, but are not limited to:

- suppliers not sending a bill for consumption at all;
- providing inaccurate bills;
- billing on estimated readings;
- setting a direct debit at the wrong level; or

¹ See the standard licence conditions of the electricity supply licence and gas supplier licence, available at: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>

- failing to update a prepayment meter with the correct tariff or balance, which means the consumer has been undercharged.

Ultimately, it is the responsibility of suppliers to bill consumers correctly for their usage and to ensure consumer accounts are correctly reconciled. Consumers must not be held responsible for failing to identify errors in their billing or that a debt balance is accruing.

The Backbilling Requirements apply to all payment methods, regardless of the payment type, meter mode or meter arrangements. The 12-month backbilling limit applies in all cases where a supplier is seeking to recover charges for unbilled consumption that is over 12 months old, except where the licensee has been unable to take charge recovery action for the correct amount of gas/electricity consumed due to obstructive or manifestly unreasonable behaviour of the domestic or micro business customer. A failure from a customer to provide a meter reading will not absolve the supplier from the backbilling limit. Evidence of customer contacts attempted and the different methods used should be maintained in the supplier's records.

The Backbilling Requirements sit alongside complementary licence conditions which must also be taken into consideration. These include, but are not limited to, the Standards of Conduct (SLC 0 and SLC 0A) where processes must be complete, thorough, fit for purpose and transparent. When mistakes are made, suppliers need to act promptly to put things right. SLC 21B (billing based on meter readings) requires suppliers, amongst other things, to take all reasonable steps to provide billing based on meter readings; obtain a meter reading for each of its customers at least once every year; and make available a bill or statement of account for each customer at least twice yearly. Under SLC 27, suppliers must take all reasonable steps to ensure the fixed amount of a domestic customer's regular direct debit payment is based on best and most current information available. Where customers are struggling to pay a legitimate charge, suppliers must take all reasonable steps to ascertain ability to pay and take this into account.

In the accompanying Annex, we have republished our annotated version of SLC 21BA, reiterating the intent of the policy. This follows reports of disputes between consumer bodies and energy suppliers regarding the intent of the Backbilling Requirements. This guidance was previously issued on 05 March 2018, prior to SLC 21BA coming into effect from 01 May 2018. Guidance issued to consumers on backbilling can be found on the Ofgem website.²

We remind suppliers it remains their responsibility to accurately bill consumers and adhere to the prohibition on backbilling in accordance with the backbilling licence condition, except in the specific circumstances accounted for by that condition, which include when consumers behave in an obstructive or manifestly unreasonable way. We are mindful that the effects of COVID-19 are far-reaching and difficult to predict. We will continue to be pragmatic in response to unpredictable and changing circumstances. We will consider the evidence provided by consumer bodies, and review suppliers' compliance with the Backbilling Requirements. Where we have reason to believe that suppliers are not applying the Backbilling Requirements correctly, we will investigate further and take action to ensure compliance and provide redress to any disadvantaged consumers.

Yours faithfully

Karen Mayor
Interim Deputy Director of Retail Monitoring and Compliance

² Energy back billing: A guide to your rights, available at: <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/who-contact-if-its-difficult-paying-energy-bills/energy-back-billing-guide-your-rights>

Annex – Annotated version of standard condition 21BA with explanations of policy intent

Condition 21BA. Backbilling

Part A: application to Domestic Customers

Prohibition

21BA.1 Subject to paragraph 21BA.2, where the licensee or any Representative issues a Bill to a Domestic Customer or otherwise seeks to recover (including via a Prepayment Meter) Charges for the Supply of [Electricity / Gas] from that customer (hereafter a “charge recovery action”), they must only do so in respect of:

- (a) units of [gas / electricity] which could reasonably be considered to have been consumed within the 12 months preceding the date the charge recovery action was taken; and
- (b) where applicable, amounts in respect of a Standing Charge or any other type of supply charge accrued within the 12 months preceding the date the charge recovery action was taken.

Policy intention

These conditions cover charges older than 12 months, regardless of payment type. This means for example that alongside payment on receipt of bill, consumers paying by prepayment meters would be protected by this prohibition when such charges are applied to a prepayment meter. It also applies to Direct Debit adjustments if they relate to charges which are over 12 months old. This section covers both fixed (Standing Charge(s)) and variable (Unit Rate) charges.

Exceptions to prohibition

21BA.2 Paragraph 21BA.1 does not apply in the following circumstances:

- (a) where any charge recovery action was taken prior to the date this condition took effect;
- (b) the licensee or any Representative, has taken a charge recovery action following the date this condition took effect in a manner which complied with paragraph 21BA.1 and, due to non-payment are continuing to take steps to obtain payment for the same units of [gas / electricity] and, where applicable, the same amounts in respect of a Standing Charge or other type of supply charge;
- (c) the licensee has been unable to take a charge recovery action for the correct amount of [gas / electricity] consumed due to obstructive or manifestly unreasonable behaviour of the Domestic Customer;
- (d) any other circumstances, which following consultation, the Authority may specify by publishing a statement in writing.

Policy intention

The backbilling limit applies when a supplier is seeking the recovery of previously unbilled consumption and is undertaking charge recovery action. This could include not sending a bill for consumption at all or providing inaccurate bills, which means the consumer has

been undercharged. This licence condition does not preclude a supplier from reimbursing consumers for overcharging in the past, regardless of whether this was in the last 12 months. SLC 21BA.1 is intended to protect consumers who have built up a debt without their knowledge due to inaccurate billing.

Our main policy intention with SLC 21BA.2(c) is to exclude situations where the supplier has tried to provide an accurate bill, but has not been able to, due to obstructive or manifestly unreasonable behaviour by the customer. This intention is reflected in the principles-based drafting in 21BA.2(c). We consider that this exemption is likely to apply where the consumer behaves unlawfully or prevents physical access to the meter. It is not our policy intention to provide for an exemption for situations where the consumer fails to notice or report that they are being billed on estimates, or does not respond to requests by the supplier to submit meter readings. Suppliers should read these exceptions with their other obligations in the licence, such as the obligation to take all reasonable steps to obtain a meter reading once a year and the Standards of Conduct.

SLC 21BA is only intended to apply to bills or any demands for payment that are made on or after the 1 May 2018 implementation date. For the avoidance of doubt, it is not the intent that this licence condition will apply in any circumstances where a bill or demand for payment was issued or made prior to the implementation date, and this is the intended effect of the exception in 21BA.2(a).

Neither do we intend to prevent suppliers from carrying out debt collection activities where they have, following the date the condition takes effect, first billed consumers in a manner that is compliant with the backbilling limit. We have, therefore, made clear in 21BA.2(b) that suppliers are not precluded from issuing further bills to demand payment from consumers in circumstances where they have already properly issued bills for energy consumed or charges incurred in a manner that is compliant with the 12-month backbilling limit. In that case, they may issue further bills in respect of the same units of gas/electricity or standing charge amounts beyond the 12-month limit.

Terms of contracts

21BA.3 The licensee must ensure that the terms and conditions of each Relevant Contract comply with the provisions of this condition.

21BA.4 The licensee must ensure that each Relevant Contract contains terms and conditions which reflect the effect of the provisions of this condition.

21BA.5 The licensee must not enforce or take advantage of any term of a Relevant Contract if:

- (a) the inclusion of that term is incompatible with this condition; or
- (b) the enforcement or taking advantage of that term would be so incompatible.

Policy intention

We want to ensure that these requirements are reflected in the terms and conditions of each supply contract. This will make the position clear to consumers, and will assist Ofgem with assessing supplier compliance with this licence condition. This will also help ensure that consumers have rights in respect of backbilling which can be enforced without recourse to Ofgem. Suppliers will need to consider their obligations under SLC 22 (for supply to domestic consumers) and the Standards of Conduct when including the backbilling limit in the terms and conditions. We expect suppliers to inform consumers of the backbilling limit in plain and intelligible language.

Definitions for Part A

21BA.6 In this condition:

Relevant Contract means any Domestic Supply Contract and Deemed Contract

Part B: application to Micro Business Consumers

21BA.7 In respect of a Micro Business Consumer, the licensee must comply with Part A of this condition on the basis that:

- (a) any reference to Domestic Customer is to be read as a reference to Micro Business Consumer; and
- (b) any reference to a Relevant Contract is to be read as a reference to Micro Business Consumer Contract.

21BA.8 In this condition **Micro Business Consumer** and **Micro Business Consumer Contract** have the meanings given in standard condition 7A.

Policy intention

These requirements apply to Domestic Customers and Micro Business Consumers, as they face similar issues with backbilling. We have chosen to align with the definition of Micro Business Consumers given in standard condition 7A. This aligns with the non-domestic Standards of Conduct in standard licence condition 0A. The policy intent behind the drafting of Part B is that a supplier would have to comply with all elements of Part A of condition 21BA in respect of the Micro Business Consumer. Part B does not apply to suppliers who do not supply to microbusinesses.