

Citizens Advice Scotland

Extra Help Unit

<https://ehu.org.uk/>

REC V2.0 Consultation – Response on question 2.5 regarding
unregistered supplies

February 2021

INTRODUCTION

The Extra Help Unit advocates on behalf of vulnerable consumers that have an energy complaint. It is a statutory service assisting consumers from across England, Scotland and Wales, and is managed by Citizens Advice Scotland. The legislation which supports the Extra Help Unit's work can be found in the CEAR Act. Cases are referred to the Extra Help Unit by the Citizens Advice consumer service, Ombudsman Services and the Ofgem Consumer Affairs team, as well as multiple other advice providers. During 2020 the Extra Help Unit assisted clients with 12,949 cases.

The majority of cases received by the Extra Help Unit relate to licenced energy suppliers, however we also take on a number of cases each month in relation to Electricity Distributors and Gas Transporters. We started to identify a growing number of cases over the past 2 years involving people who were being billed for large amounts of money as their gas supply had not been registered. In many of the cases there was no evidence to suggest that the consumers were actively involved in fraudulent activity. Instead the problems typically were the result of failings by other industry parties which were beyond their control.

As a result we started to engage with Ofgem to understand if Gas Transporters and Electricity Distributors were bound by any regulations in relation to charging for unregistered supplies. It became clear that there was a gap in legislation and we suggested that this needed to be closed.

Therefore our response is predominantly intended to cover Question 2.5 in the REC V2.0 consultation document.

EXPLANATION OF CONCERNS

Expectations for consumer participation and industry responsibility

The Extra Help Unit agrees with the principle that energy users must pay for the energy that they consume. We also understand that it is important that electricity and gas connections are registered and maintained, both from a perspective of individual and public safety, and also to make sure that unpaid consumption costs are not passed on to other businesses, and ultimately covered by other consumers through their energy charges.

As a result if a gas transporter or an electricity distributor was to bill a consumer who has actively engaged in fraudulent activity and/or there is evidence to support that they have behaved in a manifestly unreasonable way, then we would have no objection to this, assuming there were no extenuating circumstances that led to their behaviour.

Also for the sake of clarity where a consumer has tampered with a supply, or connected to the electricity or gas grids through connections which are dangerous or were carried out by unauthorised individuals, we would also not have any objection to reasonable revenue protection activity.

However, the cases which we have referred to Ofgem relate to supplies which are not deemed to have been the result of an illegal connection, rather they are supplies which were connected to the grid and fitted with a certified gas or electricity meter through standard procedures. The problem has been that for one reason or another someone within the industry has failed to correctly register the supply, or due to industry error a supply has been incorrectly renamed or de-energised on Ecoes or Xoserve. As a result these problems are of the industries own making.

It is shocking to consider that consumers are being financially penalised, often for very large sums of money, and for an issue that is beyond their control.

Case Study 1

The domestic consumer moved into a house and started to pay a well-known and established energy supplier for her electricity and gas consumption. In 2007 a final bill was received from this company in relation to the gas supply, and the consumer made contact to confirm she hadn't attempted to transfer and wanted to stay with them. Despite repeated attempts the consumer was always told there was nothing the supplier could do, and she stopped receiving bills for her gas consumption.

The consumer was contacted by the Gas Transporter serving her supply in 2019, who stated that she hadn't paid for her gas since she moved into the property and therefore owed the Gas Transporter £22,500.

The Gas Transporter was unwilling to accept the explanation provided, without supplying any evidence of the consumer having acted in a manifestly unreasonable or fraudulent way.

A payment plan has been agreed for £200 per month, which is on top of the consumers ongoing energy use and will take many years to pay off.

For licenced energy suppliers there is a 12 month back billing requirement, to protect consumers from industry error, when an account has been incorrectly billed or mismanaged. When Ofgem introduced this licence condition for energy suppliers in 2018, they set out a clear expectation that consumers did not need to play an active role in receiving accurate billing. The rationale for this is clearly that consumers are not experts in energy industry protocol, processes and legislation, and it would be unreasonable for the industry to expect consumers to understand their obligations without sufficient and clear attempts to engage with them. It

should also be considered that this relates to a relatively standard relationship that consumers would normally have with a service provider, and is covered by guidance which can be found in various places, including online.

A simple search on a mainstream search engine using the term “unregistered gas supply” turned up various links to forums and other sources of guidance, little of which is official. A common piece of recently added advice on forums was that unregistered or shipperless supplies did not need to be paid for. Some people incorrectly advised that the 12 month back billing licence condition would apply if a bill hadn’t been generated in these circumstances. Other people said that they had contacted multiple big suppliers and had not been able to get anyone who was able to tell them who their supplier is, or how to register their supply. Believing that the average consumer will know who to contact and the ramifications of not doing so, would be naïve or disingenuous.

Poor quality of data

In addition to the cases which come to us in relation to billing from a gas transporter or electricity distributor, we also see many examples of cases affected by poor supply point data, with property owners who are no longer receiving bills or have been erroneously transferred due to incorrect supply point data amendments, or addresses which have been incorrectly recorded on the national database.

Case Study 2 – this case study involves an established, large supplier and highlights problems with incorrectly recorded supply point data.

The elderly consumer moved into a new build property in July 2018 and was told, as part of the sale completion process, who was registered to supply both her gas and electricity. Meter reads were provided to the supplier at this time so an account could be setup.

Since then, the consumer has been sent bills relating to other properties, and therefore other accounts, but no bills relating to her own property. The consumer has contacted the supplier on several occasions to discuss this, however was either told she did not have an account or the person answering the query did not know how to proceed or correct the problem.

Having exhausted all avenues to resolve the billing problems without success, the consumer contacted the Citizens Advice consumer service in May 2020 for advice, and was referred on to the EHU.

We also occasionally receive cases involving consumers who have been unable to get their supplier to register their supply – despite many attempts. The reality is that these cases relate to people who have went to significant lengths to research the issue and seek help from the redress arrangements, but it is understandable that many people will not have the time or

knowledge to get the support they require, even if normally these people wouldn't be regarded as especially vulnerable.

Unregistered Supply vs Theft of Gas/Electricity

When in discussion with Gas Transporters and Electricity Distributors which have generated the cases we have received, they are always very clear to mention that unregistered supplies are "theft". Theft is a very serious allegation, and we don't think it is in anyway fair or appropriate to bill a consumer for the recovery of money without, tangible evidence to confirm how the person at the property has acted illegally, if this is what is being claimed. This is particularly true given the size of the balances often being requested, and the timescales that these cover.

Case Study 3

The consumer built a new house in 2011 and arranged for electricity and gas supplies to be connected to the property. He contacted a well-known and established supplier to set up a Dual Fuel account.

A little over 6 years later, the consumer was contacted by a Gas Transporter who stated his supply was not registered. Upon checking with his supplier it became apparent that only his electricity supply was registered. The consumer contacted the EHU in 2019, and we asked the supplier to confirm if any records were available, but due to data retention policies there was nothing that could be retrieved from the time the consumer had contacted them in 2011, although they did confirm that they had supplied the electricity from that point, suggesting the consumer did try to register his gas account.

The gas transporter was unwilling to accept that the consumer attempted to register their supply, and billed him for £12,500. The consumer is currently making payments of £200 per month to repay this balance, in addition to his ongoing consumption.

If a person calls a supplier and they do not have an existing account registered, it is highly unlikely that any record of their attempt to register the supply will exist, and our experience is that many frontline staff at suppliers will not know how to help them with a relatively uncommon request. Even if a supplier did take a record of conversations or requests made by the consumer (which did not lead to the supply being registered), these records are highly unlikely to be retained for an extended period due data retention policies and procedures.

We understand there is a push to improve the quality of data on the industry databases, which will lead to more detection of unregistered gas and electricity supplies going forward. While overall this is to be welcomed, it comes far too late for many consumers who will incorrectly be accused of theft, even if they have attempted to register their supply with an energy company previously.

Financial detriment caused to consumers

Many of the cases we have investigated involve consumers being billed for energy over many years (although admittedly not for standing charges). This is calculated using a standard British Gas tariff. There is often disregard for the Limitations Act (1980), on the grounds that a bill couldn't be produced - something which we don't believe to be an accurate interpretation of the Act.

According to data published by BEIS on the [Gov.uk website](https://www.gov.uk) the average domestic standard credit electricity bill last year was £755. Meanwhile the average domestic gas bill in 2020 was £522.

As highlighted in the case studies above, it is easy to see how large balances can develop over several years and how these balances can then be difficult to pay off, particularly as the person will have to pay for their ongoing energy use at the same time. Even if a payment plan is offered, this could have a detrimental impact on a person's finances for many years. Requests for payments which run to several thousand pounds are unacceptable, and for the majority of people, they will prove very difficult to repay.

We have seen some evidence of pushy tactics to engage with consumers, and also some people being offered significant discounts in exchange for an upfront payment. Licenced energy suppliers have come a long way in ensuring they pursue debts in a more reasonable and fair way, whatever a consumer's financial situation. Much of this improvement has been down to enhanced regulation and monitoring as well as engagement by consumer groups, including Citizens Advice Scotland and Citizens Advice (England and Wales). We believe a similar focus is required to improve standards in the billing of previously unregistered supplies.

RESPONSE TO CONSULTATION PROPOSALS

We were extremely pleased to see the following question included in the REC V2.0 consultation document.

Question 2.5: Do you agree that the approach and processes for gas unregistered sites should be standardised, as set out in the Unbilled Energy Code of Practice?

It is also noted:

"we have included additional principles to highlight that backbilling restrictions may apply where theft cannot be proven. We consider that, in general, a consumer should not be worse off by virtue of an investigation being conducted by a network rather than a supplier."

As further details of these principles have not been published publicly, and will be addressed through a newly established "Theft Group", we cannot comment on their exact detail. However, we will respond to the key question, and set out our expectations of Ofgem to protect people

from harm and the financial detriment that currently result from charges for unregistered gas and electricity supplies, due to a gap in regulation.

Answer to consultation Question 2.5

We would warmly welcome clearer expectations being set out on how charges for unregistered supplies are billed, and how these costs could be recovered from consumers. However, it is also Ofgem's obligation to ensure that this standard is set at an appropriately high level, to make sure energy consumers affected by unregistered supplies are not used as a means of generating profit for gas transporters and electricity distributors. So the detail which sets out any standardised approach will be vitally important.

We feel any industry agreement or legislation that is introduced must address the following points:

- The status quo with no maximum time scale for billing an unregistered supply is not a reasonable or acceptable situation. It is also not an acceptable situation that a transporter/distributor can accuse an energy user of having "stolen" energy deliberately, without any supporting evidence having been provided.

In most of the cases we have seen, the transporter/distributor has been unable to provide any tangible evidence to confirm exactly why the site is unregistered. If evidence exists of fraudulent activity or deliberate theft this should be clearly evidenced and the recovery of charges managed through an entirely separate process.

- Any requirement that the energy user must provide evidence of having attempted to register their supply is not reasonable. As outlined above records of calls or other communications to suppliers are likely to be unavailable due to data retention schedules, and the average person is not necessarily going to have considered keeping tangible records/evidence of their attempts to have resolved this at the time.
- Once any process clarifies the difference between deliberate theft, and a site being unregistered for unknown reasons or error, the billing of this second group of users can be looked at in a more reasonable and appropriate way. Confusing the two groups is only likely to give rise to inappropriate outcomes.
- We understand that people should be expected to pay for their energy use, but even applying the Limitations Act (6 years in England and Wales; 5 years in Scotland) feels inappropriate where there is a significant likelihood of the industry being at least partially at fault in many situations.
- Ideally, we believe a 12 month back billing limit in line with the requirement in the supplier licence conditions, would be the ideal solution and avoid any significant confusion with the existing supply licence requirements, which more people will be familiar with.

- If gas transporters and electricity distributors are to bill consumers for consumption, they must rigorously apply the same Ability to Pay and Debt Recovery principles as a licenced energy supplier.
- Any standardised approach must allow Ofgem to take action when the principles of this agreement have been breached. Without Ofgem having ability to take some form of compliance or enforcement action, confidence that the "Theft Group" can act in a dispassionate manner would be compromised.
- We also believe that a consumer group should also be part of discussions to represent the people who ultimately are affected by these decisions, and avoid only industry interests being put forward. We also believe that if this group is to be looking at the subject of unregistered energy supplies, then it should not be called the "Theft Group", and take a more appropriate name instead.

In conclusion, we are extremely pleased that this matter is being looked at by Ofgem and the wider industry. However, from what we are aware of, there is still much work to be done in setting the standards at an appropriate level. The standards set must reflect that energy consumers are not experts when it comes to industry processes, and the fact that the industry has moral as well as business obligations to proactively help people with resolving registration issues that will occur.

We look forward to understanding more about the proposals for addressing this serious problem.