

# Protecting consumers who receive backbills

## Statutory Consultation

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### Overview:

In 2007, we outlined a principle on backbilling, which set out that suppliers should not backbill consumers for unbilled consumption older than 12 months. A number of industry participants have translated the backbilling principle into a set of voluntary arrangements for both domestic and microbusiness consumers.

We have monitored the way backbilling protections are delivered by industry since 2007. In April 2017, we set out that we were launching a project to examine the regulatory framework governing energy backbilling, as we were concerned that not all suppliers had appropriate backbilling policies in place. This statutory consultation sets out the licence changes we propose following our review.

# Contents

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<b>Executive Summary</b>	<b>3</b>
<b>1. Introduction and background</b>	<b>6</b>
An overview of billing rules and voluntary commitments	8
<b>2. Policy issues and considerations</b>	<b>11</b>
We risk further consumer harm without intervening	11
Backbilling and payment types	16
The backbill limit will apply when consumers are not at fault	17
A 12-month backbilling limit for both domestic and microbusiness consumers	18
Applying the same limit for smart and traditional meters	20
Introducing a licence condition to provide consumer protection	20
Compliance with the licence condition	22
Implementation period and retrospective effect	22
Supplier cost implications	23
<b>Appendices</b>	<b>27</b>
<b>Appendix 1 – April 2017 open letter: questions and responses</b>	<b>28</b>
<b>Appendix 2 – Draft licence condition</b>	<b>29</b>
<b>Appendix 3 – Annotated version of proposed standard condition 21BA with explanations of policy intent</b>	<b>31</b>
<b>Appendix 4 – Statutory consultation questions and general feedback</b>	<b>35</b>

## Executive Summary

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Our principal objective is to protect the interests of existing and future gas and electricity consumers. Our monitoring revealed instances of suppliers sending catch-up bills to consumers for unbilled gas and electricity consumed over 12 months ago. These bills are a result of incorrect (often estimated) billing by suppliers and can cause psychological and financial stress for many domestic and microbusiness consumers.

Citizens Advice and the Ombudsman have identified catch-up bills (or backbills) as one of the main problems that consumers face. We think it is unacceptable that consumers face these backbills through no fault of their own, and should rightfully expect their supplier to bill them accurately.

Currently suppliers who supply the majority of customers follow voluntary standards to reduce backbills. However, the market has changed significantly since these were introduced.<sup>1</sup> This means the backbilling voluntary standards do not cover all suppliers, nor are these standards always followed by suppliers who have signed up to them. We therefore propose to implement a licence obligation to prevent suppliers from backbilling consumers for gas and electricity consumed over 12 months ago when the consumer is not at fault.

Our general approach is to rely more on enforceable principles in our regulation of suppliers and less on prescriptive rules. However, we have always been clear that there will be areas where prescription is the most appropriate way to regulate, such as where we feel that there is a clear minimum standard we expect to see. This is the case with backbilling.

### *Our proposal*

We aim to protect consumers from the shock and financial hardship of catch-up bills for unbilled consumption older than 12 months. This will restrict suppliers' ability to recover these charges whether through catch-up bills, by increasing the Direct Debit payments, or by adding this debt to a prepayment meter.

Adequate billing is the responsibility of suppliers. Suppliers must take all reasonable steps to obtain a non-prepayment meter reading at least once a year and bill based on meter reads. They also have a general duty to ensure that consumers are provided with accurate information. In some cases, consumer behaviour may prevent a supplier from billing properly, for example, when a consumer steals energy or prevents a supplier from reading the meter despite their best attempts. The 12-month backbilling limit will apply in all cases, except when there is clear evidence

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<sup>1</sup> 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.

that the fault lies with the consumer. A failure from a consumer to provide a meter reading will not absolve the supplier from the backbilling limit.

We propose to apply the protection to both domestic and microbusiness consumers. We have received strong evidence from Citizens Advice and the Ombudsman of the detriment that backbills are currently causing domestic consumers. We have further supporting evidence that microbusinesses are experiencing the same type of detriment.

The 12-month limit will apply to consumers with a traditional or a smart meter and will apply to all types and modes a meter can operate in, including prepayment. Where a customer has a smart meter, readings are sent automatically to the supplier and there should be few if any instances of backbilling. We expect suppliers to use smart meter data to provide customers with bills based on actual consumption, thereby ending the frustration and confusion associated with estimated bills. We think it would send the wrong message to set a prescribed backbilling limit for smart meters at this time. But this is something we will keep under review. We will also keep under review the option of reducing the backbilling period as the smart meter rollout progresses.

We propose to introduce a prescriptive licence condition to make it clear to industry what the minimum standards are. The backbilling limit intends to act as a backstop and as an incentive for suppliers to provide accurate bills to their customers. It emphasises that we expect suppliers to provide accurate information to consumers. Setting a minimum standard will give suppliers the ability to reduce their backbilling limits voluntarily as part of their offer to consumers.

We do not expect this new licence condition will impose a significant burden on suppliers. Many should already have the required systems to be able to prevent backbills for old consumption because of current voluntary arrangements. This proposed licence change will also incentivise suppliers to improve their billing accuracy and encourage them to prevent a situation where they would be forced to not charge for unbilled consumption. Meaning write-offs are less likely to occur. We consider it therefore unlikely that many suppliers will suffer financial detriment at all. However, we expect that some suppliers, who are not following voluntary arrangements, will have some minor upfront implementation costs. This will be particularly the case for microbusiness suppliers who are following the longer voluntary backbilling arrangements (three and four years).

We want suppliers to get billing right, as this is an essential part of customer service, but when they do not, we want to have in place protections to safeguard against consumers suffering detriment from backbills.

### **Next steps**

We welcome views on the proposals and draft licence condition set out in this statutory consultation. Please respond to [ConsumerPolicy@ofgem.gov.uk](mailto:ConsumerPolicy@ofgem.gov.uk) by 9am on Monday 18 December 2017. Subject to responses, we aim to publish the licence



## Protecting consumers who receive backbills

modification decision notices early next year with licence changes taking effect 56 days after the publication of the decision notices.

# 1. Introduction and background

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- 1.1. We seek your views on our proposal to introduce a licence requirement to limit backbilling to 12 months. A backbill or backbilling refers to a supplier charging a consumer for past consumption where the supplier has either not billed the consumer or has incorrectly billed the consumer. This happens relatively often and data from Citizens Advice shows, that in the first half of 2017, just over 7% of domestic consumers went more than a year without getting an accurate bill. The supplier will then send a 'catch-up' bill to the consumer to recover the unbilled charges.
- 1.2. This applies to both domestic consumers and microbusinesses. Without a mandatory limit, suppliers are not incentivised to be efficient in the way they deal with bills which leads to poor customer service standards.
- 1.3. Backbills are a concern for many consumers. The detriment they cause includes:
  - Unexpected large bills ("shock-bill") which causes mental stress and may make an already vulnerable situation worse.
  - Difficulties to repay the bill as a consumer's income is not sufficient to cover the extra bill, which can lead to the consumer becoming financially vulnerable or challenging for a microbusiness' financial viability.
- 1.4. Citizens Advice and the Ombudsman Service: Energy ("the Ombudsman") receive high numbers of backbilling cases every year.<sup>2</sup> High catch-up bills are a considerable concern for consumers struggling to pay. Even a relatively low 'shock-bill' can cause difficulties for a household's or an individual's finances, particularly for the more financially vulnerable, and are often a cause of consumers getting into energy debt. The Money Advice Service found that in 2015 32% of UK adults would be unable to pay an unexpected £300 bill without cutting back on essentials. This rose to 50% or more for those who were unemployed, receiving benefits or living in social housing.<sup>3</sup> Age UK has pointed out that for older population "[the] serious worry is inaccurate bills and an anxiety about unexpected costs".<sup>4</sup> A backbill would be of great concern to many domestic consumers, not just those already in vulnerable situations.

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<sup>2</sup> See chapter 2

<sup>3</sup> Money Advice Service, Financial Capability in the UK 2015, November 2015, [https://prismic-io.s3.amazonaws.com/fincap-two%2Fd08746d1-e667-4c9e-84ad-8539ce5c62e0\\_mas\\_fincap\\_uk\\_survey\\_2015\\_aw.pdf](https://prismic-io.s3.amazonaws.com/fincap-two%2Fd08746d1-e667-4c9e-84ad-8539ce5c62e0_mas_fincap_uk_survey_2015_aw.pdf)

<sup>4</sup> Quoted in Smart Energy GB's response to Institute of Directors' report on smart meters, <https://www.smartenergygb.org/en/resources/press-centre/press-releases-folder/iod->

- 1.5. Similar concerns about large catch-up bills are present among owners of small businesses. For example, the Association of Convenience Stores (ACS) highlighted the importance of stable energy costs for the viability of convenience store businesses and points to the fact that many small business consumers have no greater resource or understanding of energy markets than domestic consumers.<sup>5</sup> The latter is supported by the Competition and Markets Authority's (CMA) energy market investigation, which found that both domestic consumers and microbusinesses face similar barriers to engage with the market. In particular, they found that traditional meters and bills have a harmful effect on engagement (both for domestic and microbusinesses) due to a lack of visibility of consumption.<sup>6</sup>
- 1.6. 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.<sup>7</sup> We responded to the super-complaint in 2007 and set out a principle on backbilling. This resulted, in 2007, in an industry-led voluntary 12-month limit on backbilling for domestic consumers, where suppliers were at fault.<sup>8</sup> Most of the largest suppliers in the sector at the time signed up to this.<sup>9</sup>
- 1.7. The backbilling limit for domestic consumers was followed by a set of industry-led voluntary backbilling limits for microbusiness consumers in 2012. The backbill limits for microbusinesses were longer (three and four years for electricity and gas, respectively) than for domestic consumers.
- 1.8. In April 2017, we announced that we were launching a project to examine the relevant regulations governing backbilling.<sup>10</sup> Our minded-to position was to introduce a backbilling limit in the supply licence, as we were not confident that self-regulation was providing adequate protections for all domestic and microbusiness consumers. We are concerned that not all suppliers have appropriate backbilling arrangements in place.

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[response?tab=1&docspage=12](#)

<sup>5</sup> ACS response to our 2015 Smart billing for a smarter market consultation, <https://www.ofgem.gov.uk/ofgem-publications/99749>

<sup>6</sup> CMA, Energy Market Investigation – Final Report, 24 June 2016, p. 1106, <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

<sup>7</sup> See for example our 2016 letter on microbusiness backbilling:

<https://www.ofgem.gov.uk/publications-and-updates/microbusiness-back-billing>

<sup>8</sup> The backbilling rule was included in the Energy UK Code of Practice for Accurate Bills or 'Billing Code'

<sup>9</sup> British Gas, EDF, E.ON, npower and ScottishPower. SSE joined recently and has not been included in the most recent Billing Code Audit (2017).

<sup>10</sup> Ofgem. Open letter – notifying of our intention to launch a project to protect consumers from backbilling, 3 April 2017, [https://www.ofgem.gov.uk/system/files/docs/2017/04/open\\_letter\\_backbilling\\_new\\_project.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/04/open_letter_backbilling_new_project.pdf)

- 1.9. This is in part due to the changes the retail market experienced since 2007. We have seen the successful entry of a large number of new suppliers since 2007, which means we now have over 100 suppliers supplying domestic and/or business consumers.
- 1.10. This has led to issues with the coverage of self-regulation, as new suppliers have not signed up to the Billing Code for domestic consumers or the voluntary standards for microbusiness consumers. However, some are following provisions on backbilling without being a signatory. We have also seen a number of examples of suppliers who have signed up to self-regulation, not follow the rules properly. We are not convinced that self-regulation has delivered the right consumer protections in this case.
- 1.11. When we originally outlined the backbilling principle, we stated that we would regulate to protect consumers if we became aware that the principle was not being applied universally. We have seen evidence, which suggests that the current self-regulation is not delivering the right outcomes for consumers, and therefore propose to introduce a licence obligation. In section 2, we have explained in more detail why we consider that the current voluntary protections are not sufficient to protect consumers.
- 1.12. It is important to note that the backbilling limit does not aim to prevent suppliers from charging consumers for the gas and electricity that they have used. This policy intends to protect consumers from inaccurate, insufficient or late billing by making sure consumers do not suffer a large catch-up bill through no fault of their own. We expect suppliers to be efficient on their processes and customer service.

## **An overview of billing rules and voluntary commitments**

### **Current billing regulations**

- 1.13. The proposed backbilling limit would sit alongside some complementary conditions in the licence. The Standards of Conduct (SLC 0 and SLC 0A) apply to many activities of a supplier in its dealings with domestic and microbusiness consumers, including billing. The Standards of Conduct require suppliers to provide information to consumers that is complete, accurate and not misleading. The supplier must behave and carry out any actions towards consumers in a fair, honest, transparent, appropriate and professional manner.
- 1.14. There are also more prescriptive requirements related to billing (SLC 21B) such as:
  - billing based on meter readings;



- taking all reasonable steps to obtain a non-prepayment meter reading at least once a year;
  - depending on the metering arrangement in place, billing at least twice a year (or quarterly where a consumer requests it or has online account managements). The rule does not apply to prepayment meters, smart metering and unmetered systems.<sup>11</sup>
- 1.15. There are also obligations on final bills (SLC 27.17), which include a requirement to correct a final bill as soon as reasonably practicable when new information becomes available and a requirement to take all reasonable steps to provide final bills within 6 weeks. Another relevant requirement is that suppliers need to make sure fixed amount Direct Debit assessments are based on the best and most current information available (SLC 27.15).
- 1.16. These prescriptive requirements aim to improve the accuracy and frequency of consumer bills and reduce the risk of estimated bills and unexpected backbills. However, they do not currently prevent backbills from happening.

### **Voluntary backbilling commitments**

- 1.17. Industry has taken a number of steps to improve the billing and backbilling in the sector. These are set out below.

#### *Energy UK Code of Practice for Accurate Bills*

- 1.18. Energy UK operates the Code of Practice for Accurate Bills (the 'Billing Code').<sup>12</sup> The Billing Code covers many commitment areas, such as 'payments and refunds' and 'backbilling', which are supported by more detailed guidance. It applies to domestic consumers, including those with smart meters. The Billing Code limits backbills, where the supplier is at fault, to one year. All of the six largest suppliers are signatories, which includes the requirement to do an annual compliance audit. In 2015, Energy UK began publishing high-level, supplier-by-supplier results of the audit in the form of ratings. No other suppliers are signatories.

#### *BEIS good practice principles*

- 1.19. The Consumer Reference Group (CRG)<sup>13</sup> led by the Department for Business, Energy and Industrial Strategy (BEIS) recently developed good

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<sup>11</sup> See SLC 21B for details

<sup>12</sup> See <http://www.energy-uk.org.uk/customers/energy-industry-codes/code-of-practice-for-accurate-bills.html>

<sup>13</sup> The Consumer Reference Group is a BEIS led, supplier and consumer body forum

practice principles to mitigate the risk and impact of consumers receiving a backbill following the installation of a smart meter. The principles will complement the Billing Code.

*ICoSS and Energy UK voluntary standards for backbilling of microbusinesses*

- 1.20. ICoSS<sup>14</sup> and Energy UK developed a set of voluntary standards to govern backbilling of microbusiness consumers.<sup>15</sup> These standards limit backbills (where the consumer has fulfilled certain conditions) to three years for electricity and four years for gas and apply to all meter types. Unlike the domestic Billing Code, suppliers' performance against the voluntary standards is not audited and suppliers merely self-certify. Certain suppliers have subsequently also made further commitments for microbusiness consumers that exceed the Voluntary Standards, by limiting backbills to one year.

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established under the BEIS Smart Metering Implementation Programme. Ofgem is a member. It provides advice and, where appropriate, solutions to Smart Metering Design Group to mitigate consumer journey challenges arising from actual domestic and non-domestic consumer experiences in the smart meter roll-out.

<sup>14</sup> Industrial and Commercial Shippers and Suppliers group. An industry forum that brings together energy suppliers active exclusively in the non-domestic market.

<sup>15</sup> For voluntary commitments and list of signatories, see: <https://www.energy-uk.org.uk/files/docs/Policies/Micro%20business/VoluntaryStandardsforBackbillingofMicroBuisinessCustomersApril2.pdf>

## 2. Policy issues and considerations

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### Chapter Summary

We have identified consumer harm due to backbilling for energy consumed over 12 months ago. In this chapter, we set out the case for intervention and set out in detail that we plan to address the detriment by introducing a new backbilling limit into suppliers' licences.

**Question 1:** Do you agree with our assessment of the consumer harm? Both for domestic and microbusiness consumers?

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

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

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

### We risk further consumer harm without intervening

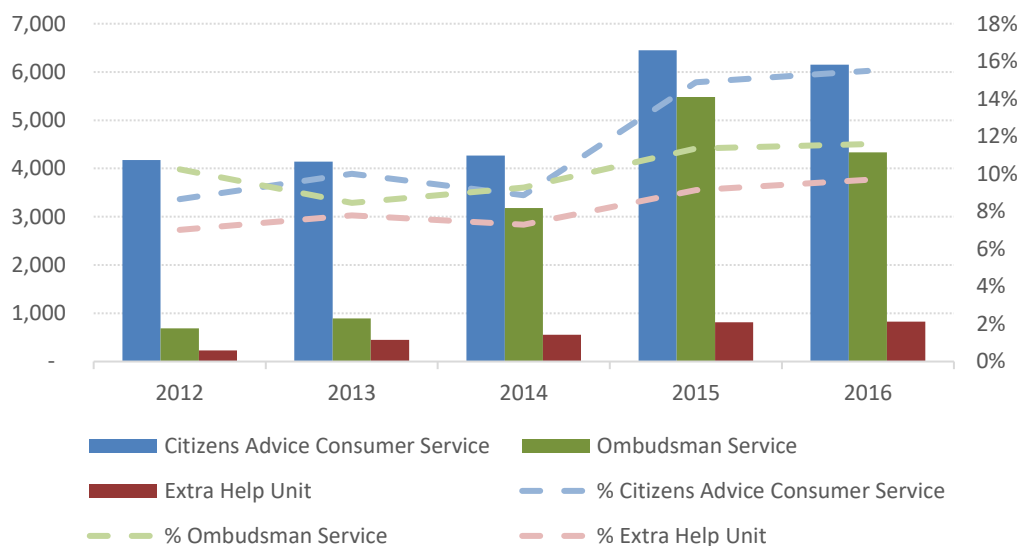
#### *Domestic consumers*

- 2.1. Cases relating to backbilling are on the rise with over 6,000 and 4,000 cases reported to Citizens Advice and the Ombudsman respectively in 2016. We also note a rise in Extra Help Unit cases, the unit within Citizens Advice that deals with cases concerning vulnerable consumers. With over 15% and 12% of total cases received, backbilling continued to be one of the main reasons why domestic consumers contacted the Citizens Advice Consumer Service and the Ombudsman respectively, in 2016. The median backbill issued to domestic consumers was £1,160 in 2016/17, with extreme cases of backbills in excess of £10,000. The median length of a backbill was 24 months for domestic consumers.<sup>16</sup>

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<sup>16</sup> The median backbill amount and length have been calculated using a sample of 203 domestic backbilling cases randomly picked from data provided by Citizens Advice's Consumer Service between October 2016 and March 2017. To avoid overstating the impact of outliers (such as very large backbills) we use medians rather than averages. Note that figures are based on information provided by the customer only which makes it difficult to determine whether the back billing principle would have applied in all these cases.

**Figure 1: Domestic backbilling cases 2012-2017 – total backbilling cases and backbilling cases as proportion of total cases**



Source: Based on data from Citizens Advice, Ombudsman, and the Extra Help Unit.

2.2. Based on Citizens Advice data we estimate the annual detriment (ie £ amount that should have been written off was the 12-months limit being applied) to Citizens Advice’s consumers resulting from backbilling as between £0.8 and £2.3 million.<sup>17</sup> This estimate should be treated with caution and might be an understatement of the true detriment. For example, some consumers may resolve their issues with their supplier directly, rather than via Citizens Advice, some consumers may pick another consumer body when seeking advice and some consumers may not dispute the backbill at all. These factors mean that the backbilling reported to Citizens Advice could be an underestimation of the total impact of suppliers not applying the backbilling limit.

2.3. Case studies from Citizens Advice demonstrate some of the situations consumers may face related to backbilling. A backbill can be particularly challenging for consumers who are already vulnerable.

- **Case study 1:** The consumer has been with the supplier for three years and had a direct debit set up for £43 a month. He then

<sup>17</sup> Estimation based on Citizens Advice data between October 2016 and March 2017, multiplying the average domestic overcharge (£ amount that should have been written off was the 12 months limit being applied) with the total number of annual domestic backbilling cases (due to uncertainty around the coding of backbilling cases we present an upper and a lower bound). We do not hold sufficient data to perform a similar calculation for microbusinesses.

*received a letter from the supplier stating that he had an outstanding balance of over £5,000 and the company was increasing his direct debit to £593 a month. The consumer said that from when he joined the supplier in 2014 he never received a bill. Through escalation via the Extra Help Unit, the supplier agreed to revise its calculations and a new bill of around £2,000 was subsequently issued.*

- **Case study 2:** *The consumer, who survived on a very low income and had no history of poor payment, suddenly received a large bill for £1,786. The consumer went to her local Citizens Advice Bureau for assistance and the supplier informed her that her gas consumption had been estimated between 2014 and 2016. The consumer said that meter readers had regularly visited the property so she had no idea why this would be the case. Only after prompting by the Citizens Advice Bureau did the supplier apply the 12 months backbilling limit, which still left the consumer with a balance of £960 owed, which she struggled to pay.*
- **Case study 3:** *The consumer lives at the property with her partner and three children. She suffers from arthritis and as a result is in receipt of the Personal Independence Payment. The consumer who paid for her electricity via a prepayment meter moved out of her property in September 2015, and informed the energy supplier. Months later, the consumer received a bill for £519. After the EHU had contacted the supplier, it was discovered that debt had not been added at the time the consumer received the prepayment meter. Since the debt was now older than 12 months, the supplier agreed to write off £519.*

- 2.4. The six largest domestic suppliers have signed up to the Billing Code, which limits the time domestic suppliers can backbill their customers to 12 months. But no suppliers, outside of the largest six suppliers, have signed up to the Billing Code. We know that a number of suppliers apply the backbilling limit regardless of whether they are a member of the Billing Code. However, we still see suppliers not applying the voluntary limit consistently or not observing the limit at all.
- 2.5. Even where suppliers are signatories to voluntary commitments, we find that such commitments do not sufficiently protect domestic consumers from being presented with a large catch-up bill. Citizens Advice and the Ombudsman report that all of the large six domestic suppliers issued backbills for consumption older than 12 months despite being signatories to the Billing Code. For example, the six large suppliers accounted for over 60% of backbilling cases reported to the Citizens Advice Consumer Service in 2016. We are also aware of cases in which the Ombudsman required the supplier to apply a 12-month backbilling limit in accordance with the Ofgem principle on backbilling and the Billing Code, yet the supplier refused to follow the Ombudsman decision. Through conversations, the Ombudsman emphasised that different suppliers have

## Protecting consumers who receive backbills

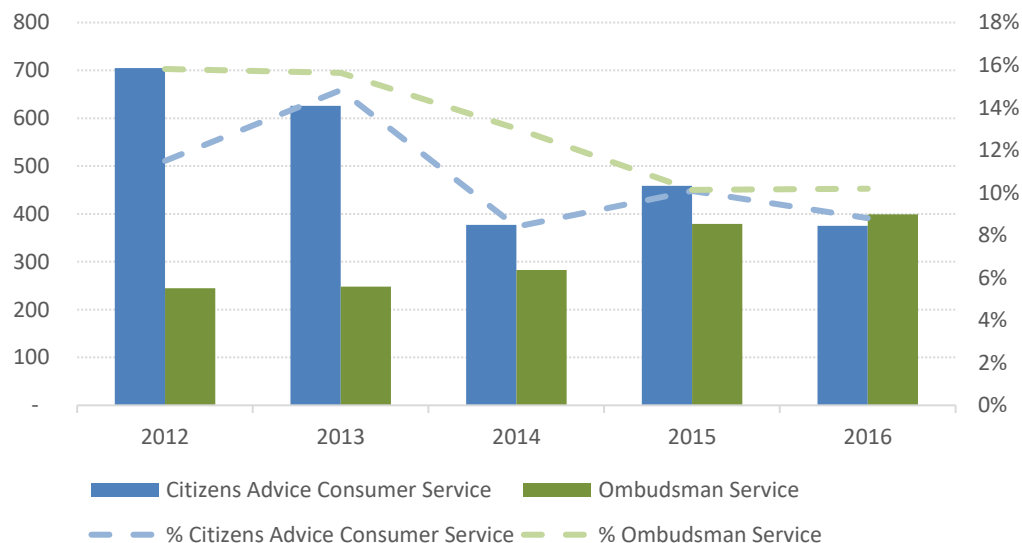
different attitudes to applying the backbilling principle with some suppliers revealing poor performance.

- 2.6. We are particularly concerned about backbilling protections as suppliers are installing more and more smart meters. Citizens Advice reports cases of domestic consumers receiving backbills for unbilled consumption when their smart meter is installed. Receiving a large catch-up bill with the installation of a smart meter could considerably hamper a consumer's smart meter experience. We suspect some unbilled consumption will become known with the continued installation of smart meters in the next few years. This could increase the number of backbills in the next few years. It is therefore important that, subject to responses received, the proposed protections are implemented as soon as possible.

### *Microbusinesses*

- 2.7. Citizens Advice and the Ombudsman report fewer microbusiness cases relating to backbilling. In 2016, there were 375 and 399 respectively. Yet, microbusiness backbilling cases make up about 10% of all advice given by Citizens Advice and cases dealt with by the Ombudsman. In general, fewer microbusiness consumers use Citizens Advice and the Ombudsman compared to domestic consumers, which would explain the lower number of cases, but there is a clear year on year increase for Ombudsman cases related to backbilling. Our concern that microbusinesses were experiencing similar issue to domestic consumers was confirmed by responses to our April open letter. For example, both Citizens Advice and the Association of Convenience Stores pointed to similar detriment for microbusinesses as domestic consumers.

**Figure 2: Microbusiness backbilling cases 2012-2017 – total backbilling cases and backbilling cases as proportion of total cases**



Source: Based on data from Citizens Advice and the Ombudsman.

- 2.8. Analysis based on an RFI carried out in 2013 shows that for microbusinesses the majority of backbills were less than three years from the issue date and were less than £2,000 in value. The data indicated that suppliers were moving towards their one-year backbilling commitment. However, a small minority of consumers had been issued with backbills worth over £20,000 or exceeding five years.<sup>18</sup> An RFI carried out in 2015 still showed concerns around the variations of backbilling limits in place and the consistent application of the backbilling limit.<sup>19</sup>
- 2.9. We also received case studies from Citizens Advice and the Ombudsman on how suppliers were backbilling microbusinesses.
- **Case study 4:** *The consumer became responsible for the property in October 2014 and provided an opening meter reading to start the account. The supplier received meter readings between July 2014 and April 2016, but failed to use these. It transpired that the supplier did also not use the consumer's opening meter reading and chose to estimate this instead. Towards the end of 2016, the supplier amended the account using the correct meter readings, which created a balance of approximately £12,000. The consumer was unhappy that the supplier had not billed the account correctly which had resulted in a large debt. Following the Ombudsman investigation, the supplier took steps to remove the previously unbilled charges consumed more than 12 months prior to the first actual bill.*
  - **Case study 5:** *The consumer joined the supplier in August 2014. The consumer called the supplier repeatedly requesting bills while continuing to send readings online every month. The consumer changed supplier after a year due to receiving no bills. The consumer then received a final bill for over £4,000 in October 2015 - this is the only bill the consumer has ever received. The consumer spoke to the supplier and requested for a payment plan, as the consumer could not afford the amount upfront. The consumer then did not hear anything back until June 2016. The supplier now asks for payments of over £1000 a month for 4 months, which the consumer cannot afford. Citizens Advice Consumer Service advised the consumer to raise a formal complaint and ask for the backbilling code to be applied.*
  - **Case study 6:** *The consumer opened the business in 2013 and made regular payments. In June 2016, the consumer received a*

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<sup>18</sup> Ofgem, Micro-business back-billing: Publication of supplier data covering April 2012 – March 2013, December 2013, <https://www.ofgem.gov.uk/sites/default/files/docs/2013/12/micro-business-back-billing-supplier-data-covering-april-2012-march-2013.pdf>

<sup>19</sup> Ofgem, microbusiness backbilling, 31 March 2016, <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-back-billing>

*letter claiming the supplier made a mistake and had not used meter readings provided by the consumer. They estimated usage for three years and the supplier requested payment of £23,249. The supplier subsequently reduced the bill to £5,534, but also increased the Direct Debit from £80 per month to £1,000 to recover the debt. The consumer sold the business in August 2016. Citizens Advice Consumer Service advised the consumer to file a case with the Ombudsman.*

- 2.10. Information published by Energy UK and ICoSS in May 2016 suggests that 17 non-domestic suppliers have signed up to the Voluntary Standards for backbilling of microbusinesses (four years for gas, three years for electricity) with 12 suppliers having already moved to a one year limit for both gas and electricity.<sup>20</sup> However, we are concerned that the principle, even when applied, does not provide microbusiness consumers with sufficient protection. Backbills of three and four years, respectively, could still cause significant detriment to microbusiness consumers (see case study 4 and 6).
- 2.11. We are also concerned by the way voluntary backbilling limits are applied to microbusinesses. In response to our open letter, the Association of Convenience stores noted that industry has worked on voluntary commitments, but that more active involvement of the regulator is required to ensure the backbilling limit is robust, adhered to and, if necessary, enforced. Another respondent (a business energy broker), said that in around 70% of cases, the backbilling limit is not applied properly by suppliers. In many cases, the broker needed to remind suppliers of their commitments. Citizens Advice also confirmed in their response that microbusinesses share many of the same characteristics as domestic consumers and suffer similar detriment through poor billing practices.

## Backbilling and payment types

- 2.12. Backbilling can be relevant for all payment methods, as this is about unbilled charges regardless of payment method. It is probably more likely to affect consumers paying on receipt of bill or by direct debit.
- 2.13. For consumers paying on receipt of bill the application is self-explanatory, but the backbilling limit will also apply to consumers paying by Direct Debit (see case study 1). Suppliers will not be allowed to amend Direct Debits to recover charges contrary to the proposed backbilling limit (ie 12 months and where the consumer was not at fault). Nor will they be able to charge for consumption in excess of 12 months when a Direct Debit consumer leaves the supplier. The backbilling limit will also apply to consumers paying by prepayment meter. As backbilling issues could

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<sup>20</sup> Energy UK and ICoSS, Voluntary Standards for backbilling of microbusiness energy customers, May 2016, p. 3.



arise, for example, when the wrong tariff is loaded onto the meter or when a debt is not properly applied to the meter (see case study 3).

## The backbill limit will apply when consumers are not at fault

- 2.14. 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 in 2015.<sup>21</sup> 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.
- 2.15. We have translated this intention into the licence condition by including a principles-based exception to the effect that the backbilling limit will not apply:
- where the licensee has not been able to recover charges for unpaid energy, despite sending repeated demands for payment in a manner compliant with licence obligations; and
  - where the licensee has been unable to issue a bill for the correct amount of gas/electricity consumed because of obstructive or manifestly unreasonable behaviour by the consumer.
- 2.16. 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 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.
- 2.17. Other examples of circumstances we consider would be covered by this exemption include:<sup>22</sup>

### *The consumer behaves unlawfully*

- 2.18. We intend to exclude cases where the consumer can reasonably be considered to be at fault. This would include situations such as:

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<sup>21</sup> Ofgem, Smart billing for a smarter market: our proposals

<sup>22</sup> The current licence draft allows Ofgem to extend the circumstances in which the exemption applies.

## Protecting consumers who receive backbills

- There is sufficient evidence that they have stolen electricity or gas.
- There is sufficient evidence that the consumer has not kept his or her meter in proper working order (this applies when a consumer is using their own meter).

### *The consumer prevents access to the meter*

- 2.19. Our intention is to exclude cases where the consumer prevents more than one reasonable attempt to gain access to its meter(s). We are talking here about physical access to the meter, not failing to respond to requests for consumer meter readings (which does not of course prevent the supplier from making such requests). Evidence of contacts and attempted contacts should be in the supplier's records.
- 2.20. If suppliers decide that a consumer is at fault and therefore choose to backbill for unbilled charges older than 12 months, we would expect them to be able to provide evidence to show why they have taken this decision and communicate this with the consumer.

## **A 12-month backbilling limit for both domestic and microbusiness consumers**

- 2.21. One of the key considerations for the backbill limit is its duration. For consumers, a longer time period means they are exposed to potentially higher backbills. For the supplier, the longer the limit, the more time they have to identify and resolve errors before they are prevented from backbilling. We need to strike a balance between providing an essential consumer protection and allowing suppliers enough time to correct mistakes and problems.
- 2.22. The supply licence sets out a number of requirements for billing frequency (ie twice yearly or quarterly for consumers that request it or manage their account online) and taking meter readings (suppliers must take all reasonable steps to obtain a non-prepayment meter reading once a year). It makes sense to link the backbilling limit to these requirements and already existing industry standards through self-regulation. A consistent time limit, regardless of a consumer's billing preferences, has the advantage of ensuring that the fundamental level of protection from detriment of backbilling is consistent for all consumers.
- 2.23. We therefore propose to introduce a 12-month limit on backbilling. Aligning this with the current voluntary arrangements and already practiced standards will reduce the burden of implementation for suppliers. It also aligns with the Ofgem 12-month backbilling principle,

which means domestic consumers will not be confused about a change in time limit.<sup>23</sup>

- 2.24. This would mean strengthening the current voluntary standards for microbusiness consumer backbilling, which currently allows four years for gas and three years for electricity, however in practice the majority of suppliers following the voluntary standards have committed to a 12-month limit.<sup>24</sup>
- 2.25. Applying the same limit to microbusinesses is supported by responses to previous consultations. In 2015 when we consulted on backbilling proposals for a smart backbilling limit, the majority of respondents agreed with implementing the same protections for microbusinesses.<sup>25</sup> It is also supported by the fact that the majority of suppliers have signed up to the voluntary standard for microbusiness backbilling. The majority of suppliers following the voluntary standard have agreed to limit backbilling to one year, which in effect brings these arrangements closely in line with arrangements for domestic consumers.<sup>26</sup> It is also worth pointing out that the Ombudsman already applies a 12-month backbilling limit for microbusinesses in line with the 12-month limit applied for domestic consumers.
- 2.26. Some respondents to our recent open letter, such as Citizens Advice and the Association of Convenience Stores, also noted the similarity between microbusiness consumers and domestic consumers in the way they deal with energy, justifying a similar approach in this case.<sup>27</sup> The CMA noted in its recent energy market investigation that barriers to engagement with the market in general are similar for domestic consumers and microbusinesses.<sup>28</sup>
- 2.27. A few respondents raised concerns that the backbilling limit should not apply to microbusinesses as they are different from domestic consumers and do not need the same protections. Based on the above and the evidence we have collected we feel that a similar level of protection for microbusinesses is justified. This is further supported by the additional protection for microbusinesses that we have already included in the supply licence (SLC 0A and 7A) and the access these consumers have to

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<sup>23</sup> Ofgem backbilling principle, <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/who-contact-if-its-difficult-paying-energy-bills/energy-back-billing-your-rights>

<sup>24</sup> Energy UK / ICoSS, Voluntary Standards for backbilling of microbusiness energy customers, May 2016.

<sup>25</sup> Ofgem, Smart billing for a smarter market: our decision, March 2016, <https://www.ofgem.gov.uk/publications-and-updates/smart-billing-smarter-market-our-decision>

<sup>26</sup> Energy UK / ICoSS, Voluntary Standards for backbilling of microbusiness energy customers, p. 3.

<sup>27</sup> Ofgem, Open letter - notifying of our intention to launch a project to protect consumers from backbilling. 3 April 2017.

<sup>28</sup> CMA, Energy Market Investigation – Final Report, 24 June 2016, p. 66, <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

the Ombudsman. This protection would be a logical extension of the existing protections in the licence. We have therefore chosen to align with the definition of microbusinesses in the supply licence, which also aligns with the definition used in the voluntary standards on backbilling of microbusinesses.

## Applying the same limit for smart and traditional meters

- 2.28. We are proposing to have a 12-month limit in place regardless of whether consumers have a traditional meter or a smart meter. We have previously considered a shorter backbilling limit for smart meters, however we are not convinced that this is justified based on the evidence of detriment we have seen regarding smart meter backbilling. There is only a small percentage of consumers with smart meters who currently receive estimated bills. For example, BEIS finds that across all suppliers only 6% of domestic smart meter bills were estimated in Q2 2017 with a range in performance at different suppliers of between 4% and 24% (the upper bound of the range is likely due to individual suppliers ramping up their smart meter roll out with impacts likely to be temporary). In addition, results of an RFI issued by Citizens Advice suggest that in Q2 2017 only 2.9% of domestic consumers with smart meters were going more than 6 months without an accurate bill.<sup>29</sup>
- 2.29. Nor do we want to set a backbilling limit for smart meters that is 'good enough'. We expect backbilling to become less relevant over time, particularly as more and more consumers have smart meters installed. This is an opinion that many of the respondents to the open letter shared. Ideally, and this is what we will expect all suppliers to strive for, consumers with smart meters should not receive backbills at all. Indeed, accurate bills and wirelessly transmitted meter readings are some of the key benefits of smart meters for consumers and should bring an end to the frustration and confusion associated with estimated bills. We think setting a prescriptive shorter backbilling limit for smart would therefore send the wrong message.
- 2.30. But there may still be times where suppliers get things wrong (eg, when large numbers of smart meters are rolled out at the same time). We therefore propose to have the same backstop limit for consumers with smart meters, particularly to provide adequate protection during roll out. However, we will continue to monitor how backbilling protections are delivered by suppliers and we do not rule out implementing a shorter limit for consumers with smart meters if the evidence justifies this.

## Introducing a licence condition to provide consumer protection

- 2.31. Respondents to our open letter expressed various opinions on whether a prescriptive licence condition was the best way forward. Some questioned

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<sup>29</sup> Citizens Advice data shared with Ofgem.

the need for intervention at all and recommended continued reliance on self-regulation. Arguments used included the limited scope of the problem, Ofgem's move to principles-based regulation, and the large section of the market that already complies with the backbilling rules set by industry. Other respondents welcomed the prescriptive approach to address the problem and to ensure consistency across the market.

- 2.32. We have considered carefully all the arguments expressed by respondents and we propose to introduce a backbill limit via suppliers' licence obligations, in line with our earlier minded-to position.
- 2.33. This is consistent with our general approach to rely more on enforceable principles in our regulation of suppliers. We have always been clear that there will be areas where prescription is the most appropriate way to regulate, such as where we feel that there is a clear minimum standard we expect to see. This is the case with backbilling. A licence obligation covering all suppliers would give all consumers an essential minimum level of protection, while still allowing suppliers to enhance the protection they offer consumers by reducing the limit further. This is a clear extension of our 2007 position where we said we would intervene if required. It also ensures that Ofgem can take compliance or enforcement action when suppliers are not following the backbilling limit.
- 2.34. One respondent raised the concern that a prescriptive licence condition on backbilling might unintentionally prevent innovative tariffs, for example demand side response tariffs or tariffs that allow a set amount of consumption at a fixed price. While it is impossible to predict what future innovative tariffs might be impacted by the backbilling limit, at this time we see this as the best way to set a minimum level of protection for consumers. We expect the impact on innovation to be minimal.
- 2.35. An alternative approach is to continue to rely on existing or future voluntary industry arrangements. But, as has become apparent over the years, this cannot ensure that all consumers will be consistently protected. Nor would it be sufficient to rely on the Ombudsman to repair past detriment given that not all customers who receive a backbill seek an Ombudsman ruling, and given the various instances where suppliers challenged Ombudsman rulings. We also know of one supplier who has not followed the Ombudsman's ruling on backbilling. We want to prevent detriment from happening as much as possible and protect consumers who might not go to the Ombudsman.
- 2.36. Another alternative could be to rely on the Standards of Conduct (SLC 0 and 0A) to protect consumers from backbills and to enforce the backbilling principle. We discounted this option, as we want to make sure that the backbilling limit is presented as a clear minimum consumer protection that suppliers need to adhere to. This would remove any possible uncertainty as to what Ofgem expects from suppliers.

## Compliance with the licence condition

- 2.37. Once the new proposed licence condition comes into force, there must be no more backbilling for undercharged consumption older than 12 months when the consumer is not at fault. This includes sending catch-up bills, increasing direct debit payments, and adding unpaid charges to prepayment meters in the form of debt. This should translate into a significant decrease in cases reported by Citizens Advice and the Ombudsman. We also expect consumers to receive fewer bills based on estimates as this contributes to backbills.
- 2.38. The proposed licence condition includes a requirement on suppliers to include the backbilling limit in their terms and conditions. Apart from creating rights for consumers and signposting the limit, this will allow Ofgem to assess compliance in a proportionate way without necessarily issuing sector-wide RFI's. In addition to our own compliance monitoring activities, we will draw on intelligence about backbilling cases that has been gathered by Citizens Advice and the Ombudsman, or evidence that comes to our attention through other routes. We expect suppliers to include this obligation in the terms and conditions in a clear and easily comprehensible format to make sure they comply with SLC 25 (informed choices for domestic consumers) and the Standards of Conduct.

## Implementation period and retrospective effect

- 2.39. The 12-month backbilling limit will apply from the day the licence is modified to include the new condition (implementation date). This means that suppliers will have 56 days from the decision to make sure their systems are ready to apply the backbilling limit.
- 2.40. The new licence condition will only apply to bills or any demands for payment that are made on or after the implementation date. This means that there is an element of retrospectivity in terms of applying to energy that was originally consumed or charges that were otherwise incurred prior to the implementation date. However, for the avoidance of doubt, it is not the intent that the licence condition will apply in any circumstances where a bill or any demand for payment is issued or made prior to the implementation date and this is the intended effect of the exception in 21BA.2(a).
- 2.41. The short implementation period reflects the urgency with which we want to address the consumer detriment that we have identified. We think suppliers have been given adequate notice through our earlier minded-to position in our April 2017 open letter and this statutory consultation setting out the details of the proposal. Another reason for this is that our proposed licence condition closely aligns with existing industry standards (voluntary arrangements and application by the Ombudsman of the backbilling principle). We expect suppliers to continue to follow the spirit of the backbilling principle until this policy becomes effective.

## Supplier cost implications

- 2.41. We have decided not to carry out an impact assessment for the purposes of section 5A of the Utilities Act 2000. We have reached this view primarily because our proposals are based on the spirit of the existing voluntary requirements and rulings made by the Ombudsman. We also consider that there is a need to act quickly to ensure that there are minimum and consistent standards for backbilling, particularly during a period where historic billing inaccuracies are more likely to become known due to the smart meter rollout.
- 2.42. We nevertheless gave cost implications some consideration, not least to inform our assessment of the extent to which our proposal is proportionate to deliver the intended policy outcomes. Therefore, while there will be a positive impact on consumers through limiting the time suppliers can issue backbills, we do not consider that implementation of the proposal would result in a significant cost for industry participants.<sup>30</sup>

## Supply to domestic consumers

### *Upfront costs*

- 2.43. We understand that a number of suppliers already have a process for managing backbills, including a time limit. Signatories to the Energy UK Billing Code publicly committed not to issue a backbill for energy consumed longer than 12 months ago. Signatories to the Billing Code currently are the six largest suppliers, whom represent 81% of the domestic gas supply market and 83% of the domestic electricity supply market.<sup>31</sup> Although the Billing Code does not apply to all suppliers, many suppliers in the domestic market follow the spirit of the backbilling principle and have already enshrined a 12-month backbilling limit into their internal policies.
- 2.44. However, we know a number of domestic suppliers do not (yet) have an internal backbilling policy, or apply backbilling limits in excess of 12 months.<sup>32</sup> We also acknowledge that suppliers entering the domestic supply market would need to set up systems to ensure compliance with our proposal. In such cases, there may be a minor implementation cost of either updating current systems or purchasing new ones. For smaller suppliers there could be an additional cost of renegotiating contracts with third party systems providers. We note that some of the steps for

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<sup>30</sup> Note that the we expect benefits to consumers mainly in form of avoidance of stress related to the reception of large catch-up bills. There may only be a limited financial impact as we would expect suppliers, in order to comply with this new obligation, to become more efficient and to prioritise billing within 12 months.

<sup>31</sup> Q1 2017 data, <https://www.ofgem.gov.uk/data-portal/retail-market-indicators>

<sup>32</sup> This is based on responses to an RFI on smart backbilling policies and a review of supplier websites.

implementing systems to avoid backbills for consumption older than 12 months (eg systems to automatically prevent bills being sent out to consumers who have not had accurate bills for more than a year, or to flag accounts for review to provide readings) are already required under existing licence obligations and would therefore not need much implementation from suppliers.<sup>33</sup> As such, the cost would not be additional to those required to meet existing licence requirements.

- 2.45. We understand that the number of suppliers signing up to voluntary commitments or otherwise adjusting their internal policies is growing with the number of suppliers in the market. Therefore, some suppliers currently not applying a 12-month limit may have done so in future regardless of Ofgem implementing licence condition. In such cases, the counterfactual against which cost considerations should be assessed would not be a “non-existent or insufficient policy on backbilling”, but a policy in accordance with the 12-month limit introduced by a voluntary commitment. However, this would only apply to some suppliers with others, in absence of this policy, continuing to not follow a 12-month limit.
- 2.46. As a result, we do not anticipate that our proposals would require the majority of domestic suppliers to develop internal processes and therefore do not impose a significant upfront cost. Yet, we acknowledge a minor upfront cost for suppliers either not yet applying a 12-month backbilling limit or applying a limit in excess of 12 months, ie those who have chosen to not follow the principle or are unaware it exists.

#### *Ongoing costs*

- 2.47. Where systems and processes, including managing exceptions (ie when the backbilling limit should be applied), fail to apply the backbill limit, the supplier would incur the cost of not recovering a backbill from a particular consumer. For a supplier this cost of writing off outstanding revenues would depend on whether such backbills were rare exceptions or part of a more systemic problem.
- 2.48. Based on data from Citizens Advice we estimate for 2016/17 that a binding backbilling limit of 12 months would have resulted in annual write-offs of at least £0.8-2.3m.<sup>34</sup> However, our proposed licence requirement would in itself strongly incentivise suppliers to ensure systems and processes are in place to make sure consumers are billed within 12 months; therefore reducing the likely amount of required write-offs. In addition, estimated bills, which are a cause of backbills, are expected to decline with more consumers receiving their smart meter(s).

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<sup>33</sup> For example, SLC 21B (take all reasonable steps to take a meter reading once a year, take all reasonable steps to reflect the reading in the next bill, make available a bill twice a year) or SLC 27.15 (ensure that direct debits are re-assessed based on best information which is, or reasonably should be, available).

<sup>34</sup> See paragraph 2.2



We also note that in the event of a complaint being raised with Citizens Advice or of a dispute being referred to the Ombudsman, some suppliers may ultimately comply with a 12-month backbilling limit and the bill being adjusted downwards. This means that in those cases, the ongoing costs related to write-offs will be the same as when a licence condition would be in place.

- 2.49. For those suppliers who are not yet applying a 12-month backbilling limit, the new rules could result in several manual checks being required to ensure that backbills do not exceed the permitted timeframe in the early phase of implementation. We understand from suppliers' responses to our 2016 smart meter consultation that such reviews would only cause temporary additional costs until processes are fully automated.
- 2.50. As a result, if processes to avoid backbills were set up properly – and we expect suppliers to adjust their systems to accommodate this new licence condition – we would not anticipate a significant ongoing cost to suppliers as bills should be issued within the permitted 12-month window.

### **Supply to microbusinesses**

#### *Upfront costs*

- 2.51. The voluntary commitments developed by Energy UK and ICoSS limited backbilling for non-domestic supply to three years in electricity and four years in gas. In May 2016, Energy UK and ICoSS published a list of backbilling limits by non-domestic suppliers with 12 out of 17 suppliers already applying a 12-month limit for gas and electricity.<sup>35</sup> The list demonstrates that almost all of the largest (by market share) microbusiness suppliers already apply a 12-month limit.<sup>36</sup> These findings are supported by responses to an RFI we issued in 2015.
- 2.52. As a result, while we would not expect a big upfront cost for the majority of non-domestic suppliers serving microbusinesses, for those not applying a 12-month limit there may be a minor implementation cost of providing systems with this functionality. We acknowledge that this cost could be slightly higher than in the domestic market given the less restrictive standards in the voluntary standards for backbilling of microbusiness consumers. Yet, the move to a 12-month limit by the majority of microbusiness suppliers suggests that the cost of shortening the limit would not be overly burdensome. We are aligning this proposal with definition of microbusinesses as used in the voluntary standards, which would therefore not impose additional costs on suppliers.

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<sup>35</sup> Energy UK and ICoSS, Voluntary Standards for backbilling of microbusiness energy customers, May 2016.

<sup>36</sup> Large microbusiness suppliers not applying a 12-month backbilling limit include Contract Natural Gas (electricity N/A, gas 6 years) and Corona (electricity N/A, gas 4 years).

*Ongoing costs*

- 2.53. Similar to the domestic market, where systems and processes fail to send a bill to the consumer within 12 months, this would result in suppliers incurring a cost. Evidence suggests that there are significantly fewer backbilling cases for microbusiness than for domestic supply. We note that, through involvement of Citizens Advice and the Ombudsman, a number of backbills already get reduced in accordance with the spirit of the backbilling principle, which means this licence condition would not change the ongoing costs for suppliers in those cases. We also expect the new rules to create a strong incentive to avoid backbills in the first place and we therefore would not anticipate the policy to result in a significant ongoing cost to suppliers.

## Appendices

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<b>Appendix</b>	<b>Name of Appendix</b>	<b>Page Number</b>
1	April 2017 Open Letter: questions and respondents	28
2	Draft licence condition 21BA	29
3	Annotated version of proposed licence condition 21BA with explanations of policy intent	31
4	Statutory consultation question and general feedback	35

## Appendix 1 – April 2017 open letter: questions and responses

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We received 11 responses to our April 2017 open letter. The letter explained our minded-to position to introduce a new licence obligation to strengthen consumer protection for backbilling.

We set out three aspects that our project would consider and respondents have provided feedback on these.<sup>37</sup> Responses covered a range of views and we have published them alongside this statutory consultation where respondents have agreed for their response to be published. They raised the following themes:

- the evidence base for intervention;
- the need to introduce a prescriptive licence condition as opposed to relying on principles or self-regulation;
- the requirement to set a minimum standard;
- whether the same protections need to be provided to domestic consumers and microbusiness consumers;
- whether there is a need for a separate limit for smart meters;
- detailed questions on what the obligation will contain, for example concerns with defining when a consumer or a supplier is at fault or whether the licence condition will be clear enough on what is expected of suppliers;
- concerns with the impact on potential future innovative tariffs.

We have addressed these questions and comments earlier in the statutory consultation document.

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<sup>37</sup> the types of consumers any new licence obligations will need to protect (ie domestic alone or both domestic and non-domestic); whether it is appropriate for different limits to apply for consumers with differing metering technology; the level of detail any new licence obligations (should we decide they are necessary) need to contain.

## Appendix 2 – Draft licence condition

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### **Condition 21BA. Prohibition on 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.

##### **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.

##### **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.

**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.

## Appendix 3 – Annotated version of proposed standard condition 21BA with explanations of policy intent

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### **Condition 21BA. Prohibition on backbilling**

#### Overall policy intention

With this standard licence condition, we aim to protect consumers from being charged for unbilled consumption over 12 months old when they are not at fault.

### **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

We intend to 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 caught by this prohibition. 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

We aim for the backbilling limit to only apply when a supplier has not issued a bill for consumption. 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. This is about protecting consumers who have built up a debt without their knowledge due to inaccurate billing.

Our main policy intention is to exclude situations where the supplier has tried to provide an accurate bill, but has not been able to do this due to obstructive or manifestly unreasonable behaviour by the consumer. 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.

The new licence condition is only intended to apply to bills or any demands for payment that are made on or after the implementation date. For the avoidance of doubt, it is not the intent that the licence condition will apply in any circumstances where a bill or demand for payment is issued or made prior to the implementation date, and this is the intended effect of the exception in 21BA.2(a). We also do not 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 compliant with the backbilling limit. We have therefore included the drafting in 21BA.2(b) to make clear that suppliers are not precluded from issuing further bills to demand payment from consumers in circumstances where there have already properly billed for energy consumed or charges incurred in a manner compliant with the 12-month backbilling limit. In that case they are allowed to issue further bills in respect of the same units of gas/electricity or standing charge amounts beyond the 12-month limit.

We have also included the possibility to extend the circumstances where the backbilling limit does not apply.

### **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 if imposed. 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 25 (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*

We have chosen to apply this to domestic and microbusiness consumers, as they face similar issues with backbilling. We have chosen to align with the definition of microbusiness consumers in standard condition 7A to align with the non-domestic Standards of Conduct in standard 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 microbusiness consumer. Part B does not apply to suppliers who do not supply microbusinesses.



## Protecting consumers who receive backbills

## Appendix 4 – Statutory consultation questions and general feedback

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We would like to hear your views on any of the issues raised in this document and have included specific questions that we would like you to respond to. In particular, we welcome views on the draft licence conditions in the appendices to this document. Please respond by 9am on Monday 18 December 2017 and send responses to:

Dennis Berg  
Consumers and Competition  
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Unless marked confidential, all responses will be published in Ofgem’s library and on our website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). You may ask for your response to be kept confidential which we will respect subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you would like your response to be kept confidential, please clearly mark your document(s) accordingly.

If the information you give in your response contains personal data under the Data Protection Act 1998, the Gas and Electricity Markets Authority will be the data controller. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000.

### **General feedback**

We believe that consultation is at the heart of good policy development. We are keen to hear your comments about how we’ve conducted this consultation. We’d also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk).