Making a positive difference
for energy consumers

To: domestic suppliers,
insolvency practitioners
appointed to failed Energy
Supply companies and other
interested parties

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Dear stakeholders,

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

The purpose of this letter is to: (1) remind domestic energy suppliers of the requirements of their licences, so that their customers are able to avail themselves of relevant consumer protections; and, (2) remind insolvency practitioners to abide by the same regulatory requirements and contractual duties as energy suppliers when dealing with consumers.

Ofgem's supplier Standard Licence Condition (**SLC**)[1] 21BA sets out conditions under which suppliers can recover charges for the supply of gas or electricity. How a supplier ensures that a consumer pays the correct amount depends on the payment method the consumer uses, but includes actions such as sending a customer a bill, applying charges to a pre-payment meter, or accurately setting a customer's Direct Debit payments. We will collectively refer to these activities as '**charge recovery action**' in this letter.

In short, charge recovery action may only be taken in respect of units of gas or electricity consumed, or standing charges accrued, within the 12 months before the date of the charge recovery action (the **Backbilling Requirement**). There are some exceptions to this rule, for example where the supplier had already sent an accurate bill before but the customer has not paid the relevant charges. Gas and electricity supply licensees are required, by SLC 21BA, to reflect the Backbilling Requirement in their consumer supply contracts. Any consumer energy supply contract that does not reflect the Backbilling Requirement breaches SLC 21BA and is, as a result, unlawful. Any term of a supplier's consumer supply contracts that is incompatible with the Backbilling Requirement is unenforceable.

To ensure that the contractual consumer protections required by SLC 21BA are in place, we recently engaged with 63 domestic energy suppliers to ensure that the terms and conditions (**T&Cs**) of their consumer supply contracts comply with SLC 21BA. As well as ensuring compliance with the supply licences, including such a contractual provision should help consumers to understand how they are protected by SLC 21BA and can rely on the Backbilling Requirement. Our investigation found that although all suppliers adhered to the Backbilling Requirement, it was not reflected accurately in the T&Cs of 34 suppliers. We have engaged with all 34 suppliers to ensure that they update their T&Cs and to receive assurances that they have complied with the Backbilling Requirement historically.

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

In the event of a supplier failure, consumers are protected by our Supplier of Last Resort (**SoLR**) process to ensure continuity of supply for those consumers and to prevent broader harm to the industry. Consumer protections contained in the supply licences, particularly those that form part of the T&Cs of consumers' supply contracts, continue to apply to interactions between consumers and the failed supplier, as managed by any insolvency practitioner that has been appointed to manage the affairs of the failed supplier. However, irrespective of whether the Backbilling Requirement is reflected in a supplier's T&Cs, no party may seek to recover unbilled debt dating back more than 12 months. To do so would be to enforce an unlawful contract. This applies to energy suppliers, including their representatives, while the customer is under contract, but remains applicable in the event that an insolvency practitioner is appointed to manage a failed supplier, including in the context of a SoLR process, or the supplier's consumer debt is collected by a debt collection agency (**DCA**).

In November 2019,[2] we set out our experience of dealing with insolvency practitioners appointed to manage failed energy suppliers and Ofgem's expectations of insolvency practitioners operating in this context. Insolvency practitioners are required to abide by the same regulatory requirements and contractual duties as energy suppliers when dealing with consumers, including the Backbilling Requirement. Whilst undertaking charge recovery action, we expect insolvency practitioners to treat consumers fairly.

We have set out clear expectations that licensees and other parties operating in the GB energy sector need to follow. It is the responsibility of suppliers to ensure that they are operating in compliance with the requirements of their licence and that their customers are able to avail themselves of relevant consumer protections. In the event that an insolvency practitioner or DCA collects a supplier's consumer debt, they are required to abide by the same regulatory requirements and contractual duties, including the Backbilling Requirement. This will continue to be an area of focus. If we become concerned that these requirements are not being followed, we may consider escalation via compliance and/or enforcement action, where appropriate, including use of Ofgem's consumer protection powers, which apply in relation to both licensees and other parties operating in the GB energy sector.

Yours faithfully,

Richard Bellingham
Head of Retail Compliance

[2] https://www.ofgem.gov.uk/publications-and-updates/open-letter-insolvency-practitioners-appointed-failed-energy-supply-companies