

Protecting consumers who receive back bills statutory consultation response

December 2017

Energy UK is the trade association for the GB energy industry with a membership of over 90 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry from established FTSE 100 companies' right through to new, growing suppliers and generators, which now make up over half of our membership.

Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers. In this context, we are committed to working with Government, regulators, consumer groups and our members to develop policies which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and predictable regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.

These high-level principles underpin Energy UK's response to Ofgem's Statutory Consultation on protecting consumers who receive back bills. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Executive Summary

Energy UK agrees that backbilling where the supplier is at fault has the potential to cause customer detriment. It is for this reason that we introduced a backbilling clause into the Code of Practice of Accurate Bills (the Billing Code). Under the terms of the Billing Code, if suppliers have made a mistake, they have agreed to limit when and how far back they can charge a customer to no more than one year.

As well as implementing this clause into the Billing Code, Energy UK has developed a range of backbilling scenarios to help consumers and stakeholders better understand how the Code might affect customers in different circumstances. Energy UK is concerned that putting backbilling into licence could jeopardise the future of the Billing Code.

We understand that Ofgem does not feel the Billing Code works well enough and we present a defence of the Code in this response. We also understand that Ofgem is disappointed that more suppliers haven't joined the Billing Code. We share this frustration and would like to outline some of the reasons we think smaller and medium suppliers have not joined the Code and how this might be addressed in future.

Finally Energy UK is a strong supporter of the move towards Principles-Based Regulation (PBR) and we would urge Ofgem to ensure any backbilling licence condition is less prescriptive than currently drafted.

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

Energy UK agrees that backbilling where the supplier is at fault causes consumer harm. This is why we put a clause into the Billing Code to limit how far back a supplier could charge. We do, however, note that Ofgem does not distinguish between complaints cases upheld or dismissed. This raises the risk of there being a significant number of 'false positives' in the consumer complaints data and therefore arguably fails to provide a clear overall assessment of harm and of supplier compliance. In addition there is currently insufficient data in relation to microbusiness detriment.

It is also important to state that bill shock in a credit meter sense is not an issue that affects PPM in the same way – unless there is some sort of meter fault an actual read from the meter is being used to calculate consumption and this is deducted from the prepaid balance. There is no bill shock because the billing / collection is effectively 'real time' and 'bills' for Prepayment Customers are effectively statements rather than demands for payments.

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

We agree that backbilling when the supplier is at fault should be limited to twelve months. This is why we designed the clause in the Billing Code to be as it is. There is however a question about whether Ofgem intends the new licence condition to precisely replicate the Billing Code clause or if there are any subtle differences. It is currently unclear.

There are also a few issues we'd like to raise in relation to the implementation of the proposed licence condition as well as some of the possible consequences:

Effects on the Billing Code

The Billing Code aims to drive improved standards of performance and to provide a common framework around which energy suppliers can build better processes and controls for billing their customers. Even without backbilling, we still feel that this is an important code, particularly as over 200 million energy bills are sent to customers every year. The six members of the billing code – British Gas (including Scottish Gas), E.ON, EDF Energy, npower, ScottishPower and SSE – recognise that better, clearer information is needed to gain customers' trust.

The Billing Code is overseen by a board which provides strategic direction. There is also a billing operations group which deals with the more day to day management of the Code. The billing operations group provides a forum for stakeholders such as Citizens Advice, Ofgem and OS:E to discuss billing issues and how the code could develop. In addition to the governance arrangements the billing operations group and the board have developed other initiatives such as the backbilling scenarios document. These initiatives perform an important function in clarifying obligations and customer expectations.

In addition the Billing Code is independently audited by PwC and high level results are published to ensure transparency around supplier performance. The audit procedures comprise a review of the design and operating effectiveness of processes and controls each supplier has in place to manage the relevant clauses in the Code. The processes and controls are identified by the supplier and reported in a detailed self-assessment document. These are then reviewed to ensure the design is appropriate to mitigate the risks and then detailed testing is performed at each supplier site to ensure the controls identified are operating effectively. Any exceptions identified during the review are discussed with the supplier to understand their impact on the customer base and moderated against all other members to ensure a consistent view on impact has been taken.

PwC are happy to meet with Ofgem to discuss this process in more detail should you wish to understand more about this.

Energy UK has concerns that putting backbilling into licence could jeopardise the future of the Billing Code. We are about to conduct a review of the Billing Code and we would welcome views from Ofgem and other stakeholders on how the Code proceeds. Our proactive recruitment of new signatories was put on hold while we waited for a decision from Ofgem on backbilling. It is our view that the audit regime can be onerous for smaller and medium-sized suppliers. We will actively be seeking the views of non-signatories in our review of the Code and we welcome suggestions from them on how the Code and its governance and audit regimes could be reformed to include a wider range of signatories.

Principles-Based Regulation

Energy UK feels that this licence condition is an opportunity to take a more principles-based approach to regulation. The licence condition as drafted requires that suppliers update their terms and conditions in line with the proposed change. A principle requiring that customers are made aware of the proposed change and their rights with regards to backbilling could lead to better customer outcomes if suppliers were empowered to think about how best to communicate about this. While there is nothing to stop a supplier proactively taking a more innovative approach, the licence condition as currently drafted does nothing to move away from prescription to a more principles-based approach to regulating.

Customer responsibilities

Energy UK feels that the wording currently set out in the consultation does not adequately reflect the responsibilities that exist for customers to provide meter readings and to be constructive in responding to suppliers' requests for meter reads.

In the majority of cases when suppliers fail to get a read it is not due to purposeful obstruction by the customer. More common causes will be due to the practicalities of a customer being able to provide access or the meter being inaccessible. For example, situations where meter cupboard keys being held by a landlord or building management company or when a customer is not home when a meter reader calls. In situations such as this the ability to read the meter is out of the supplier's control. While customers are not being obstructive in the manner suggested in Ofgem's draft legislation, they are the only route to gaining access to the meter. It does not feel appropriate or proportionate (pre-smart mass roll-out) to ignore the customer's role in supporting timely and accurate bills and direct debit payments through the provision of readings (as recognised in the current regulatory framework i.e. SLC21B).

Considerations for Microbusiness

In relation to a licencing obligation on back-billing microbusiness customers, Energy UK does not believe this is required at this time. We would therefore again ask Ofgem to provide more detailed evidence of any potential detriment to justify regulatory intervention at this time. We would additionally like Ofgem to consider whether it is correct and necessary for microbusiness customers to be treated in the same manner as domestic consumers in relation to back billing.

With this in mind, and given that most non-domestic suppliers have already sufficiently committed to the voluntary standards relating to microbusiness back billing - we believe Ofgem's focus should be on engaging and promoting the existing voluntary standards, rather than introducing new obligations.

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

Clearly costs will be different for individual suppliers based on their particular approach and their systems and processes. Some suppliers may face increased compliance costs and risk as a result of the need to implement system changes. There is a question about whether the need to provide evidence of customer fault in backbilling cases will introduce higher compliance risk and cost and we would welcome commentary from Ofgem on this.

There are also further potentially significant costs that could accrue to Billing Code members if the requirements of the proposed licence condition are in fact different to what they are in the Code.

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

We are somewhat disappointed that having reached the statutory consultation stage, there are still big questions about the extent to which Ofgem's proposals differ to existing Billing Code requirements. Energy UK would, therefore, appreciate the provision of further clarification by Ofgem. This is essential to fully understand any impact on suppliers and whether the proposed implementation period is reasonable.

We would have preferred another consultation and Energy UK has concerns that Ofgem have issued an Open Letter and then progressed to issuing a statutory consultation. If Ofgem issue a Decision Notice in early 2018, a precedent may be set for implementing new licence obligations.

Should you require more information please do not hesitate to contact Natan Doron on 0207 747 2932 or at natan.doron@energy-uk.org.uk / Helen Thomas on 0207 747 2964 or at helen.thomas@energy-uk.org.uk