

# Ombudsman Services: Energy – Backbilling guidance consultation Energy UK Response

18 October 2019

## Introduction

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the 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.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

This is a high-level industry view; Energy UK's members may hold different views on particular aspects of the consultation. We would be happy to discuss any of the points made in further detail with Ombudsman Services: Energy or any other interested party if this is considered to be beneficial.

## Executive summary

Energy UK welcomes the opportunity to respond to Ombudsman Services: Energy – Backbilling guidance consultation and commends Ombudsman Services Energy's (OS: E's) open engagement and transparency over its stance and principles. To keep our response as concise and useful as possible Energy UK's comments are made by exception.

Energy UK asks OS: E to be explicit about how it has taken stakeholder responses into account when it publishes its final guidance.

We would also urge OS: E to continue to ensure it takes as open and collaborative an approach to handling backbilling cases as possible. It is vitally important OS: E, industry and stakeholders work closely together when developing policy to protect consumers and promote a competitive market.

## Overarching comments

We understand OS: E would welcome consistency and recognise the need for this in terms of customer outcome. However, it remains up to individual suppliers to determine how they interpret and comply with their licence requirements on a case by case basis. What is equally important is that the Ombudsman is consistent in how it applies its own guidance. Ombudsman's guidance should not be rewriting a

principles-based licence condition. We believe OS: E will be erring in their mandate if they attempt to second guess a reasonably made supplier decision.

### **Ofgem approval of the draft guidance**

It is important to understand to what extent Ofgem has approved this approach and how this approval has been captured and recorded. The Ombudsman played a key role in determining the previous scenarios used for backbilling under the Billing Code, however we are conscious that backbilling is now a licence requirement and therefore would expect any guidance to be provided by Ofgem.

We would welcome additional information to clarify the statement 'This position has been agreed with Ofgem'. It would be helpful to have OS: E clarify whether this means that Ofgem has agreed that it is helpful for the Ombudsman to have its own views on how backbilling is applied. Or this means that Ofgem agrees with OS: E's interpretation of the Supply Licence Condition and therefore, all suppliers must operate within this guidance.

We believe guidance should come from Ofgem directly, and not OS: E, noting that Ofgem's March 2018 decision declined requests to provide guidance to suppliers as it felt it was not needed, but stated that it may do so in the future.

### **The scenarios generally**

Firstly, the scenarios/examples that have been included in the guidance have been most helpful in clarifying the Ombudsman's expectations in relation to the most common scenarios and its thinking behind its decision making. We agree with the guidance that it is up to the supplier to demonstrate within the case file the reasoning behind the supplier decision and whether backbilling applies or not. However, we think it is important that the Ombudsman adds a statement to the guidance that although the scenarios included are the most common scenarios, that this is not an exhaustive list and it is important that suppliers review disputes on a case by case basis to reach a decision regarding the application of backbilling protection. We also believe it to be an important point that the Ombudsman continues to review scenario-based examples on an ongoing basis and adds to the guidance as and when appropriate i.e. when specific back billing scenarios become an issue across the industry.

### **Comments on the stance and scenarios presented by Ombudsman Services: Energy**

#### Charge recovery

At the end of the 2nd paragraph headed Charge Recovery explained, we suggest the last paragraph is amended for clarity to "Whilst a direct debit statement is not charge recovery action, an adjustment to the DD amount within a statement (reassessment) is considered a charge recovery action".

It would also be helpful if the Ombudsman's position could be clarified where Direct Debits have been held/increased based on reasonable estimates, having sought to take readings. A supplier has taken a charge recovery action on the best available information, justifiably unaware that the current amount is incorrect.

#### Scenario A

We agree with this as there is no detriment to the customer. However, further clarity is required that there would be an exception where a request to increase a customer's Direct Debit to cover charges (i.e. a charge recovery action) that is then declined by a customer and a supplier agrees not to increase the payment but warns the customer of the potential consequences of doing so.

## Scenario B

We support this but would like to see this position validated by Ofgem.

### Exceptions

With regard to the exception scenarios there is a main area where further clarification is requested to understand the difference between the outcomes. In both cases an accurate bill could not be produced due to an invalid/no meter reading, multiple attempts were made to contact the customer using multiple contact channels, and both were resolved when the supplier attended the property and obtained an actual meter reading. It would be helpful if OS: E could articulate the factors that made one scenario applicable for backbilling and the other an exception.

### Reading the meter

With regard to Reading the Meter (A) we agree with the guidance for this scenario but we are seeking clarification on whether the Ombudsman guidance is telling us that backbilling is not applicable if a supplier has requested meter readings from the customer and these requests have been ignored, the supplier has visited the site on multiple occasions to get a reading and gained no access, and the supplier has made it clear to the customer the implications of not providing a reading?

### Erroneous transfers

With regard to erroneous transfers, we need more clarity on this scenario. We are unsure where the unforeseen charges arise as during the erroneous transfers process, the customer would have been charged by the other supplier. While the customer might not have the ability to influence the length of time taken to return the supply, the customer will have been engaged by one or both of the suppliers involved and be aware that there will be charges to recover.

### Unreasonable/obstructive customer behaviour

We are concerned that this interpretation of the licence appears to be rewriting the policy intention of the licence condition. Ofgem provided high level examples of 'obstructive or manifestly unreasonable' behaviours – this wasn't a threshold and we do not believe OS: E guidance should seek to establish one.

What is meant by 'manifestly unreasonable' should be defined by Ofgem to give utmost clarification, and we believe this definition should be provided via the Supplier Licence Condition. An example is where a supplier has made contact with a customer by phone and/or email multiple times and has arranged a time for the meter reader to visit the property on a number of occasions. On each occasion the customer is not present at the property to give the meter reader access to the meter. If this happens once, it may be deemed to be reasonable. However, if it happens more than once we believe this to be unreasonable. Suppliers suffer an additional impact of customers not being present for these appointments as every meter reader appointment incurs a cost. This means that the more visits arranged with the customer, the higher the cost.

OS: E also must, however, consider that obstruction does not mean only physical barriers, as per the policy intention of Ofgem. Customer intention can result in the inability to produce an accurate bill, for example, a customer repeatedly provides incorrect meter readings which are not discovered until 18 months and a catch-up bill is produced. The customer did not intentionally provide incorrect meter readings and was a genuine error on their part. We believe, under the current Supplier Licence Condition that this should be considered obstructive or unreasonable behaviour.

### Change of Tenancy – Additional example scenario

We would like to ask that a scenario be provided in relation to a backdated Change of Tenancy (CoT). This is a common scenario in relation to customer disputes, whereby a tenant moves into a property but doesn't inform their supplier. Once the supplier becomes aware of the new tenant account details, the

account is set up and then billed back to the date the tenant moves in. We would consider that backbilling protection does not apply in this scenario, due to the fault of the customer, as the customer has failed to engage with their supplier, whilst continuing to use energy

A common scenario happens where the customer disputes the lack of contact and advises they did in fact contact the supplier, however there is no record/evidence of this on the supplier system. We commonly find that the Ombudsman's decision in these dispute cases largely falls on the side of the customer, despite the customer having no evidence that they have contacted their supplier. It would be most helpful if the Ombudsman could present a scenario, based on the CoT example outlined, which could clarify the root of their decisions in these cases and more importantly their expectations regarding the actions of the supplier for this scenario to be a valid backbilling exception.

**For further information or to discuss our response in more detail please contact Candice Orr at [candice.orr@energy-uk.org.uk](mailto:candice.orr@energy-uk.org.uk) or 020 7747 2964.**