

Backbilling in the NI Retail Energy Market

UR Consultation
January 2019



About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



Our vision

To ensure value and sustainability in energy and water.



Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.

Abstract

Protecting consumers is at the heart of the Utility Regulator's (UR) role and we pursue this, where appropriate, through promoting effective competition in the Northern Ireland (NI) energy markets.

Backbills have the potential to cause significant financial hardship, as well as subjecting the recipients to varying degrees of inconvenience and stress. Where customers are not at fault, it could be argued that they should be afforded some protection from long-term backbills.

This consultation is seeking views on a proposal to limit backbills to 13 months for gas and electricity. This would be applicable to domestic consumers and microbusinesses across all fuels and payment types; where the customer is not at fault in causing the backbill.

Audience

Electricity network and supply companies, gas network and supply companies, customers, consumer groups, industry participants, statutory bodies and the wider stakeholder body.

Consumer impact

Backbills have the potential to cause customers significant financial hardship, as well as subjecting the recipients to varying degrees of inconvenience and stress. This project will aim to decide how best to treat customers fairly regarding backbills and seek to address any issues that arise from backbilling in the NI energy retail market.

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1. CONTEXT

1.1. Developing a policy with regard to backbilling forms a project within the UR's Consumer Protection Strategy (CPS). The CPS was launched in 2016 as a UR flagship strategy and the accompanying action plan was designed to bring about an enhanced level of domestic consumer protection in NI. CPS is a five year strategy, with four key objectives. The objectives are:

- (1) Affordability
- (2) Equal access to utility services
- (3) Empowerment through education and transparency
- (4) Leadership through being a best practice regulator

The CPS action plan detailed a list of projects to help achieve each of these objectives. A project on backbilling procedures was placed under the objective of affordability and was timetabled for year 2 of the CPS (2017-2018). The outcomes that were associated with the backbilling project were that fewer billing or metering errors would occur and that customers would be protected if/when billing or metering errors happen.

1.2. In addition, following consultation Ofgem confirmed in March 2018 that it would introduce a licence requirement to limit backbilling by energy suppliers in Great Britain (GB) to 12 months. This would apply to both domestic consumers and microbusinesses.

1.3. In that context, the UR committed to carrying out a project which would assess the level and causes of backbilling in the Northern Ireland retail energy market, as well as whether the current market arrangements are providing adequate customer protection.

Project to Date

1.4. In April and May 2018 the UR held a series of structured interviews with a range of energy suppliers and network operators across both the electricity and gas sectors. The purpose of these interviews was to gain insight into the current processes around billing, as well as determine the most common causes for backbills in NI.

1.5. On 26 June 2018, the UR published its 'Backbilling in the NI Retail Energy Market' Call for Evidence. The purpose of the paper was to assist the UR in forming an understanding of the current extent of backbilling issues in the NI

energy market, and the impact or potential impact on both consumers and companies.

About this document

- 1.6. As set out in the Call for Evidence, the project analysis aims to:
- Research and report on the scale of energy retail backbilling in NI at a market level
 - Identify causes of backbills, including assessing how many meters go unread for long periods
 - Determine whether backbills pose enough risk of harm to consumers to require additional regulation
 - If more regulation is required, identify, develop and critically analyse a potential measure / measures for the NI market which can be implemented to ensure customers are protected
 - Consider the logistical and regulatory policy implications of any measure (such as the requirement for licence modifications or legal issues)
- 1.7. We have set out our strategic priorities for backbilling in the NI energy retail market below. The intention is for these features to act as guiding principles to shape our forward policy.
- There is a limit to how far back it is reasonable to bill domestic consumers and microbusinesses, where they are not at fault in causing the backbill
 - Where it is discovered that a customer has been overcharged for energy, a full refund should be issued (up to the six years allowed for in NI legislation¹)
 - Any backbill levied by suppliers should be reflective of the actual costs² that it has incurred
- 1.8. The purpose of this document is to seek views on our proposal to limit backbills to 13 months for gas and electricity. This would be applicable to domestic consumers across all fuels and payment types as well as microbusinesses.
- 1.9. The document is structured as follows:
- Section 2 outlines the background, issues, and project scope

¹ <http://www.legislation.gov.uk/nisi/1989/1339/made>

² By actual costs, we mean the costs that would have been levied had the consumption been measured accurately.

- Section 3 provides a summary of the findings from the Call for Evidence
- Section 4 outlines the proposed measures for consultation
- Section 5 summarises the consultation questions and the next steps for the project

Responding to this consultation

1.10. The UR is keen to hear all stakeholder views on the proposal set out in this consultation paper.

1.11. Responses to this consultation should be forwarded to reach the UR on or before 4pm on 14 February 2019 to:

Colin Magee
The Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED
Email: Colin.Magee@uregni.gov.uk

1.12. Your response to this consultation may be made public by the UR. If you do not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

1.13. Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.

1.14. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.

1.15. This document is available in accessible formats. Please contact: Colin Magee on 028 9031 6626 or colin.magee@uregni.gov.uk

Equality considerations

1.16. As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:

- i. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- ii. men and women generally
- iii. persons with disability and persons without
- iv. persons with dependents and persons without.

1.17. It is our view that any impacts are likely to be positive in relation to equality of opportunity for energy consumers as they will receive more protection against long-term backbills.

1.18. The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion, or racial groups.

1.19. In the development of its policies the UR also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.

1.20. In order to assist with equality screening of the proposals contained within this consultation paper, the UR requests that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals. Furthermore, the UR welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?

Q2. Do respondents consider that the proposal around backbilling needs to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.

Timeframe and next steps

- 1.21. Once all the responses to this consultation paper are received and analysed, the UR intends to issue a decision paper which will analyse stakeholders' responses to this consultation. The anticipated timeline for this report to be issued is in early 2019.

2. BACKGROUND & ISSUES

- 2.1. Protecting consumers is at the heart of the Utility Regulator's (UR) role and we pursue this, where appropriate, through promoting effective competition in the Northern Ireland (NI) energy markets. The UR operates to ensure consumers are adequately protected in these markets through competition, alongside regulation if that competition is not deemed effective enough to adequately protect consumers.
- 2.2. We are seeking views on our proposal to limit backbills to 13 months for gas and electricity. This would be applicable to domestic consumers across all fuels and payment types as well as microbusinesses.
- 2.3. Backbills have the potential to cause significant financial hardship, as well as subjecting the recipients to varying degrees of inconvenience and stress. Where customers are not at fault, it is our belief that they should be provided some protection from long-term backbills.
- 2.4. A backbill occurs when it has been determined that a customer has not been correctly charged for the energy that they have consumed, resulting in the customer receiving an additional or updated bill for the additional energy. Under NI legislation³ this can be calculated for a period of up to six years in the past.
- 2.5. The issue of backbilling is of particular importance in the energy sector as energy is considered an essential service. In other industries a backbill dispute can result in the customer switching providers or cancelling the service all together. However, an energy backbill can force the customer into debt for a service which they will need to continue using. Furthermore, an energy customer in NI may find it difficult to switch providers if they are in dispute over a backbill as they will be flagged as being in debt. Therefore, there is a risk that energy consumers have less consumer power in backbilling situations when compared with consumers of other industries, and should therefore be afforded additional protection to mitigate against the risk of financial hardship.

Backbilling in NI

- 2.6. Research conducted by the Consumer Council Northern Ireland (CCNI)⁴ has shown that billing issues accounted for 35% of all the electricity complaints and 42% of gas complaints that it received between April 2011 and June

³ <http://www.legislation.gov.uk/nisi/1989/1339/made>

⁴ The Consumer Council energy complaints and The Consumer Council Insight Survey 2018

2018. CCNI noted that these type of complaints are typically difficult, take a long time to resolve, and often leave the consumer dissatisfied with the outcome. It suggested that the lack of a regulatory backbilling framework is having a detrimental effect on consumers' rights to prompt and fair redress of backbilling complaints.

- 2.7. Changes to NI Water's charging is a recent example of how backbilling limits can impact consumers and complaints in an NI context. In NI Water's Scheme of Charges 2017-2018, the company adopted a voluntarily maximum backbilling period of 18 months for retrospective billing where customers have been undercharged. Subsequently, NI Water billing complaints received by CCNI decreased by 37% between 2016 and 2018, with a further 67% decrease is projected for 2018-2019. CCNI suggested that the improvement is "reflective of the effectiveness of backbilling policies to help resolve complaints, as well as the incentive it provides to utilities to improve their billing and metering systems and processes."
- 2.8. Backbilling situations can arise for a variety reasons, and can result in significant stress and financial hardship for those affected. The case studies below provided by CCNI highlight some of these situations, as well as the impact for domestic consumers and microbusinesses in NI.

Case Study 1

The Consumer Council was contacted by a domestic consumer who received a large electricity backbill for over £1,400. In its dealings with the consumer it became apparent that she was vulnerable both physically and in terms of her mental health, and she was also struggling financially.

The electricity supplier reviewed the account and advised that the large bill had accumulated over several years, and had been calculated based on estimated readings as no actual meter readings had been provided since 2015.

Case Study 2

A domestic consumer had installed solar panels on his property and had an import/export meter fitted. During the installation he was shown how to read the meter and advised to submit regular reads to his supplier.

A few years later the consumer received a large electricity bill for over £2,700 from his electricity supplier. Through investigation The Consumer Council identified that the consumer had been reading the meter wrongly for a prolonged period of time resulting in the large arrears. Unfortunately the error had not been identified by the network operator, despite the consumer's readings being out of sync with actual reads taken by engineers. The consumer's reads were accepted over the engineer reads and passed to the supplier for billing purposes.

The Consumer Council worked with both the supplier and network operator to obtain a satisfactory resolution for the consumer and the arrears were reduced by £1,808.74. A repayment period of 24 months was also offered to the consumer to pay off the remaining arrears.

Case Study 3

A local charity contacted the Consumer Council regarding poor customer service and account management failures by its gas supplier resulting in arrears of over £5,000. The Consumer Council contacted the gas supplier on behalf of the charity and requested a full investigation of the issue. As a result of our involvement the balance was reduced by over £2,000 and a repayment plan was put in place to pay the remaining arrears.

Case Study 4

The Consumer Council was contacted by a local takeaway business regarding a large backbill it had received from its electricity provider for over £31k. The electricity supplier had sent the bill to the business demanding payment in full, without any apology or explanation for the large arrears.

The Consumer Council acted on behalf of the business to establish the cause of the large arrears and to reach a fair resolution. It transpired that the electricity supplier had been incorrectly entering the meter readings provided for the business for a period of two years, resulting in the large arrears.

The electricity supplier apologised to the business for the mismanagement of its account and for the stress and inconvenience caused. In recognition of the errors made on the account, the electricity supplier agreed to reduce the bill by 50% and proposed that the remaining £15,000 could be paid via a repayment plan agreeable to the business.

Case Study 5

The Consumer Council was asked to investigate a billing complaint on behalf of a local poultry business. The business had received a telephone call from its electricity supplier advising that the account was in arrears of almost £5,000 due to an error with the meter readings for the premises which had gone unidentified for two years. The supplier was also demanding payment in full within six months.

The Consumer Council acted on behalf of the business to investigate the cause of the metering error and to negotiate a financial resolution. As a result of its investigation, the bill was reduced by almost £2,000 and the remaining balance was to be paid over 12 months.

Current billing and metering regulations

2.9. Both gas and electricity suppliers are responsible for billing their customers. The amount of electricity or gas consumed by the customer is determined by a valid meter read; either an actual meter read or one provided by the customer. In the absence of either then an estimated meter read can be used.

2.10. However, meter reading arrangements differ between gas and electricity.

Electricity

2.11. NIE Networks is responsible for the collection and verification of meter readings. Customers can also provide readings to NIE Networks through Interactive Voice Response (IVR) and the NIE Networks' Website.

2.12. A schedule for the collection of quarterly readings is maintained and valid meter reads are provided to suppliers. According to its Overall Standards⁵, NIE aim to get a meter reading for 99.5% of customers once a year⁶. Where scheduled readings are either not available or could not be validated, NIE Networks provides suppliers with an estimate.

2.13. NIE Networks will bill suppliers for use of system charges for consumption adjustments arising from metering / estimating issues, which may in turn be passed through to the end customer by the supplier.

Gas

2.14. Gas suppliers have a licence obligation to use all reasonable endeavors to take an actual meter reading on an annual basis.

⁵ <http://www.nienetworks.co.uk/help-advice/claims-complaints/customer-standards/overall-standards>

⁶ Data provided to the UR by NIE showed it was meeting this standard. However, data provided by suppliers (Table 3) suggested NIE had fallen slightly short in 2017. We accept there will be a margin of error from these different data sources and this will not be investigated any further as part of this project.

- 2.15. Each year, the network operator determines the annual quantity for each Non-Daily Metered (NDM) meter point. Using a demand model that factors in these annual quantities, each day the operator will determine the estimated aggregate demand of NDM meters points in each End User Category.
- 2.16. Each month, the total NDM demand will be determined as the total gas input into the system, minus Daily Metered demand (determined through reads) and shrinkage. This NDM demand is allocated to suppliers as a proportion of their aggregate annual quantity, and they will pay conveyance charges accordingly.
- 2.17. Therefore, any gas backbill will be based on the assumption that the supplier has already incurred the costs of that unbilled gas across its aggregated NDM portfolio.

Backbilling in GB

- 2.18. In the GB energy market, an industry-led voluntary 12 month limit on backbilling for domestic consumers has been in place since 2007, following a super-complaint from Energywatch (now Citizens Advice).
- 2.19. In April 2017⁷, Ofgem launched a project to examine the regulatory framework governing energy backbilling, stating it was concerned that not all suppliers had suitable backbilling procedures.
- 2.20. According to Ofgem's resulting decision paper⁸ published in March 2018, consumer organisations and the Ombudsman stated that backbills are one of the main problems that consumers face. The regulator said that it is "unacceptable" for consumers to receive these backbills through no fault of their own, adding that consumers should "rightfully expect their supplier to bill them in an accurate and timely manner."
- 2.21. As a result, Ofgem confirmed it would introduce a licence requirement to limit backbilling to 12 months in the form of supply licence condition. This would apply to both domestic consumers and microbusinesses. However, the backbill limit would not apply when a customer is at fault, including when consumers have:
 1. Not complied with repeated demands for payment
 2. Behaved obstructively or manifestly unreasonably
 3. Behaved unlawfully
 4. Prevented access to the meter

⁷ https://www.ofgem.gov.uk/system/files/docs/2017/04/open_letter_backbilling_new_project.pdf

⁸ https://www.ofgem.gov.uk/system/files/docs/2018/03/backbilling_final_decision_policy_document_-_march_5_-_website.pdf

2.22. In addition to this, the Competition and Markets Authority's (CMA) energy market investigation also found that domestic and microbusiness customers in GB faced similar barriers to engaging with the market, such as meters and bills adversely affecting engagement due to a lack of visibility of consumption.

Scope

2.23. This project looks at the levels and causes of backbilling in the NI retail energy market, as well as whether the current market arrangements are providing adequate customer protection. We are looking at backbilling from the perspective of both domestic consumers and microbusinesses (businesses consuming up to 50MWh for electricity per annum and up to 73.2MWh for gas)⁹.

2.24. We are aware of an ongoing industry-led project to limit the backbilling of electricity distribution charges that result from specific metering issues for all electricity customers (domestic and all I&C customers). This has developed through direct consultation between industry stakeholders to address specific issues and is considered separate to this project.

⁹ The definition of microbusiness for both gas and electricity may be further clarified by the UR in our decision paper or alternatively the licence modification. There will however be no change to the consumption thresholds outlined above.

3. CALL FOR EVIDENCE FINDINGS

- 3.1. On 26 June the UR published a Call for Evidence on backbilling in the NI retail energy market. The aim was to assist the UR in forming an understanding of the current extent of backbilling issues in the NI energy market and the impact—or potential impact—on both domestic consumers and microbusinesses
- 3.2. A summary of the evidence collected is outlined below¹⁰.

Unread meters and backbilling

- 3.3. Suppliers were asked to provide the data on the number of their customers that went prolonged periods without an actual meter read (i.e. a technician on site reading the meter. This does not include customer reads). As backbilling situations are most likely to affect disengaged customers, this data provides insight into how likely it is for a customer to be billed wholly on estimated reads, when customer reads or technician reads are not available.
- 3.4. As shown in Table 1, electricity suppliers indicated that around 36,100 domestic credit meters went unread in the 12 months of 2017, which equates to 8.1% of the market. In terms of meters that went unread for all of 2016 and 2017 combined this number falls to 15,900 (3.5%). However, the number of backbills recorded for domestic credit consumers remains relatively low at around 400 in 2017, which is discussed in more detail below.

Table 1 Electricity meters without actual reads and level of backbills

Electricity customers	Credit customers		Prepay Customers		Microbusiness	
	Number (,000s)	% of customers	Number (,000s)	% of customers	Number (,000s)	% of customers
Unread meters (2017)	36.1	8.1%	41.9	11.8%	5.6	9.0%
Unread meters (2016 and 2017)	15.9	3.5%	17.4	4.9%	3.1	5.0%
Credit backbills (2017)	0.4	0.1%	N/A	N/A	0.4	0.6%

- 3.5. Whilst situations of backbilling are more likely to affect credit customers due to those customers being billed in arrears, prepayment customers can still be affected under certain circumstances (i.e. metering faults). Overall, there was

¹⁰ We did not receive responses from all suppliers, therefore data in Tables 1-3 includes some estimations

a higher proportion of unread meters for electricity prepayment meters (11.8%) when compared with credit.

- 3.6. The level of unread electricity meters for microbusinesses (9.0%) was comparable with domestic credit (8.1%), but the overall proportion of backbills produced was higher (0.6% compared to 0.1% for domestic).
- 3.7. For gas, Table 2 shows that the level of unread meters was proportionally lower than in the electricity sector at around 1.7% of the domestic credit market (1,300 meters). Whilst the number of gas backbills appears high compared with the number of unread meters, one gas supplier commented that their submitted backbills were not, in all cases, true backbills as per the UR definition due to limitations in system reporting capabilities.

Table 2 Gas meters without actual read and level of backbill

Gas Customers	Credit customers		Prepay Customers		Microbusiness	
	Number (,000s)	% of customers	Number (,000s)	% of customers	Number (,000s)	% of customers
Unread meters (2017)	1.3	1.7%	11.5	7.3%	0.1	0.6%
Unread meters (2016 and 2017)	0.2	0.2%	3.3	2.1%	0.0	0.1%
Credit backbills (2017)	1.3	1.8%	N/A	N/A	0.2	2.4%

- 3.8. As a follow-up to the Call for Evidence we asked suppliers to provide a summary of their customer base that has not had an actual read or a customer read for a prolonged period of time. This data gives us a reflection of the actual proportion of the NI customer base that are at risk of receiving a backbill¹¹. A summary of this data for domestic credit meters is shown in Table 3.

Table 3 Credit meters without an actual read or customer read

	Electricity		Gas	
	Number (,000s)	% of customers	Number (,000s)	% of customers
No actual or customer read (2017)	11.8	2.6%	1.3	1.7%
No actual or customer read (2016 and 2017)	5.7	1.3%	0.2	0.2%

¹¹ In the circumstance of a prolonged period of estimated reads followed by an actual read

- 3.9. As shown in Table 3, 11,800 (2.6%) domestic electricity credit meter customers had no actual read performed nor provided a customer read in 2017. However, this still appears disproportionate to the number of backbills sent by suppliers (~400). As it is unlikely that any customer meets their estimated consumption exactly, we assume that those customers that have had their meter go unread for longer than a year will pay for energy consumed over 12 months prior, should there be an upward consumption adjustment following a technician or customer read being received by the supplier.
- 3.10. We asked suppliers why the level of recorded backbills was disproportionately low when compared with the number of unread meters (i.e. not read by a technician or the customer). The responses generally related to the supplier's ability to extract data requested, as consumption between actual reads is not apportioned out over the quarters in question. For example, if a customer received estimated meter reads for six successive quarters, and then a subsequent actual meter read revealed they had used more than estimated, then the customer would receive a higher bill without this being recorded as a backbill. Therefore, the data outlined in Tables 1 and 2 is likely to be significantly understating the actual level of backbills by our definition (i.e. billing a customer for energy consumed beyond a certain period. The call for evidence put that time period as 12 months, but as already stated the UR's proposal is to limit backbills to 13 months. The one month of difference is explained in Section 4 of this paper.
- 3.11. Suppliers were also asked to provide the average amount in pounds that customers were billed for energy consumed over 12 months prior. However, suppliers commented that this would be difficult to determine as a judgement would be required as to how much of the energy was used beyond 12 months. Whilst several suppliers did respond with estimations of the average cost of backbills, we feel that without an agreed and unified approach, the data provided in the call for evidence is unlikely to reflect the true scale of backbilling in the NI retail market. We have identified this issue in Section 5 (Question 9) as one to be consulted on further.

Prolonged periods with no read

- 3.12. The majority of respondents agreed that prolonged periods without obtaining an actual or customer meter read combined with inaccurate estimates, which subsequently leads to charging for consumption that is more than 12 months prior, should be defined as a backbill.
- 3.13. One supplier commented that it should not be considered a backbill if that led to a restriction on what cost could be recovered by the supplier. Whilst similar regulations have been put in place in GB, it was argued that the meter reading schedule is much more regular and robust in NI. The supplier stated NIE are

incentivised to visit properties four times per year, and if every effort has been made to read the meter then some responsibility must lie with customers for the provision of accurate bills.

Microbusinesses

- 3.14. Supplier responses to whether this backbilling project should include both domestic and microbusiness customers were mixed. Whilst a number of suppliers supported the inclusion of microbusinesses, several stated that they did not feel microbusinesses required specific added protection measures and should not be considered the same as domestic customers. One supplier suggested that microbusinesses should be dealt with through the separate industry-led project referenced previously.
- 3.15. Responses from customer representatives indicated support for the inclusion of microbusinesses in any backbilling project. One respondent argued that small businesses in NI face many of the same problems as domestic energy customers, and as such should receive a similar level of consumer protection in the energy market. The response stated that energy costs have been identified as a major barrier impacting on a business's success, and that survival rates for new small businesses has dropped in recent years. Another customer representative group responded saying many small business customers have no greater resource or understanding of energy markets than domestic customers, and therefore require the same level of protection.

Customer Credit

- 3.16. The majority of respondents were of the opinion that customer credits should be treated differently from backbills, and should be returned to customers with no time limits (or limited only by the 6 years afforded in law). However, one respondent maintained that any arrangements for the repayment of credit should be aligned with backbilling arrangements.

Additional comments on responsibility

- 3.17. Several respondents outlined the various billing issues that are beyond the control of customers, such as metering faults, meter mix ups, issues with wiring, as well as errors in supplier billing. One supplier commented that customers may be paying their bills in "good faith" and said it is unreasonable to backbill the customer for a prolonged period as a result.
- 3.18. The differences between NI and GB were also highlighted. In GB, where suppliers are responsible for the installation and reading of meters, a limit on

backbills would act as an incentive on suppliers to obtain regular and accurate meter reads. A number of suppliers commented that they should not be held responsible for the cost of backbill charges in instances where the network operator is found to be at fault. Respondents suggested that the responsibility for the charges associated with inaccurate bills needs to be established within any measures associated with backbills.

4. MEASURES FOR CONSULTATION

- 4.1. Having reviewed responses to the Call for Evidence, we believe that whilst the overall level of reported backbilling is low, the impact on those affected can be significant. This is further evidenced by the backbilling case studies provided by CCNI.
- 4.2. Also as discussed in Section 3, the actual level of customers being billed for energy consumed over a year prior may be higher than is indicated by the level of reported backbills, as suppliers have highlighted limitations on their ability to identify these instances.
- 4.3. We agree with Ofgem's policy decision in GB that customers should be protected against "shock backbills" through a limit on how far back they can be billed for consumption.
- 4.4. Therefore, it is our view that backbills pose a sufficient risk of harm to customers to require additional regulation. We propose to limit backbills to 13 months for both gas and electricity. This will be applicable to domestic consumers as well as microbusinesses.
- 4.5. The 13 month limit would apply retrospectively from the date of issue on a customer's bill (i.e. no bill should charge for energy that was consumed over 13 months prior to the date of the bill being issued).
- 4.6. Below is some further rationale and a number of questions around the implementation of a backbilling limit.

Limit

- 4.7. We are proposing a limit of 13 months on how far back gas and electricity suppliers can bill domestic and microbusiness customers for energy consumption.
- 4.8. The electricity wholesale market becomes fully settled after 13 months, and suppliers will not face charges for unbilled usage beyond this point. Therefore, a 13 month limit will ensure electricity suppliers are able to recover any wholesale costs that result from a long-term adjustment of a customer's consumption.
- 4.9. Gas arrangements differ and suppliers will have already paid for unbilled usage in the non-daily metered portfolio through which conveyance charges are calculated as well as shrinkage. Despite the differences in the market arrangements between gas and electricity, we support an aligned approach on this measure and the 13 month limit would also apply to gas.
- 4.10. This is also only one month more than the limit Ofgem has implemented in GB. The difference of one month is not material enough to make us set the

limit at 12 months and remove the alignment with the electricity wholesale market settlement schedule. Given the market arrangements in gas there is no scope for any sort of alignment.

Q3. Do respondents agree that any limit to backbills for gas and electricity should be 13 months for gas and electricity?

Microbusiness

- 4.11. We believe it is important that microbusinesses be included under any potential backbilling limit. As demonstrated in section 2 in the case studies provided by CCNI, microbusinesses are at risk and potentially vulnerable to the threat of backbills.
- 4.12. The Association of Convenience Stores (ACS) has previously called for backbilling time limits to be introduced as a licence obligation. In response¹² to an Ofgem open letter the lobbying group, which represents GB and NI convenience stores, stated that many small business customers have no greater resource or understanding of energy markets than domestic customers.
- 4.13. The CMA energy market investigation also found that domestic consumers and microbusinesses faced similar barriers to engaging in the energy market. It found that traditional meters and bills can have a negative impact on engagement due to a lack of visibility of what is being consumed.

Q4. Do respondents agree that any limit to backbills should be applicable to both domestic consumers and microbusinesses?

Apply when the customer is not at fault

- 4.14. We anticipate that any such cap on backbills would apply when the customer is not at fault. In doing so, best practice can be encouraged from suppliers without indirectly incentivising uncooperative behavior from customers.

¹² https://www.acs.org.uk/sites/default/files/lobbying/open_letter_backbilling_new_project.pdf

4.15. In GB gas¹³ and electricity¹⁴ supply licences, Standard Licence Condition 21B(A) states that the limit on backbills will not apply in the following circumstances:

- where any charge recovery action was taken prior to the date this condition took effect
- 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 and, where applicable, the same amounts in respect of a Standing Charge or other type of supply charge
- the licensee has been unable to take a charge recovery action for the correct amount of gas consumed due to obstructive or manifestly unreasonable behaviour of the Domestic Customer
- any other circumstances, which following consultation, the Authority may specify by publishing a statement in writing.

Q5. Do respondents believe that Ofgem’s definition of “customer fault” is applicable to NI energy market? If not, please provide clear rationale why or identify what additional factors / scenarios should be considered

Payment types

4.16. Whilst backbills are more likely to affect credit customers who either pay their bills directly or via direct debit, we believe it is important that protection against lengthy backbills should cover all payment and meter types. Keypad customers, for example, are still at risk from backbills due to metering faults and should be afforded the same protection as credit customers.

¹³

<https://epr.ofgem.gov.uk//Content/Documents/Gas%20supply%20standard%20licence%20conditions%20consolidated%20-%20Current%20Version.pdf>

¹⁴

<https://epr.ofgem.gov.uk//Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf>

Q6. Do respondents agree that any limit to backbills should be applicable to all payment types?

Cost implications

- 4.17. From responses to the Call for Evidence and discussions with suppliers, we understand that many suppliers already have processes in place to facilitate the administration of backbills; including the management of exceptions. Therefore, we do not expect that our proposal would cause suppliers to incur significant additional cost. However, we accept that there may be some upfront cost for those suppliers without processes in place.
- 4.18. In the electricity market, if a backbill limit is correctly applied at 13 months, but the under billing occurred over a longer period than 13 months, the supplier will still face use of system costs for the customer's consumption for the entire period.

Q7. Can respondents outline the expected cost faced by suppliers to implement the system and organisational changes required to administer a limit on backbills?

Q8. For electricity¹⁵, in situations where the implementation of a backbill limit will result in the supplier facing use of system charges beyond the period of the backbill, and the supplier is not at fault, how do respondents believe this should be dealt with?

Implementation

- 4.19. As stated previously, the majority of respondents to the Call for Evidence agreed that prolonged periods without obtaining an actual meter read combined with inaccurate estimates, which subsequently leads to charging for consumption beyond a year, should be defined as a backbill.
- 4.20. However, responses to the Call for Evidence highlighted two key issues suppliers may have in achieving this:

¹⁵ This question is not applicable to gas due to the different market arrangements outlined in Section 2.

1. Identifying the customers who are being charged for energy consumed over 13 months prior in situations where there has been a prolonged period of estimated reads followed by an actual read; and
2. Determining how much additional consumption can be attributed to the period beyond 13 months.

Q9. How, and to what extent, do respondents believe these issues can be mitigated in order to implement a backbill limit that ensures no customer is billed for energy consumed over 13 months prior?

Enforcement

- 4.21. Another key consideration is how any backbill time limit would be enforced. One option would be the implementation of a voluntary obligation. However, CCNI's Financial Remedy Framework for Complaints has been in place since 2007 and not all suppliers have implemented it.
- 4.22. Ofgem also found that where suppliers were signatories to voluntary commitments, domestic consumers were not sufficiently protected from receiving a large catch-up bill.
- 4.23. We believe that a limit on backbills should cover all customers, and the most effective way to achieve that would be through a new licence condition.

Q10. Do respondents agree that any limit on backbills should be enforced through the creation of a new licence condition?

Future Incentive Regulation

- 4.24. Throughout the UR's stakeholder engagement, several suppliers questioned the fairness of being held responsible for the cost of backbill charges in instances where the network operator is found to be at fault.
- 4.25. In this project we are addressing backbilling from the customer perspective. Whilst the role of network operators and the various cost implications on suppliers is highlighted in this consultation, the underlying issue of ensuring all relevant industry bodies are correctly incentivised to minimise backbills is a much wider issue and will need to be addressed separately.
- 4.26. The UR envisages that the issue of costs and incentives associated with meter reading and metering faults which cause backbilling will be addressed in the next set of network price controls.

5. CONSULTATION QUESTIONS NEXT STEPS AND TIMELINES

5.1. The UR is keen to hear the views of interested stakeholders and invite representations on the following questions:

Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?

Q2. Do respondents consider that the proposal around backbilling needs to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.

Q3. Do respondents agree that any limit to backbills for gas and electricity should be 13 months for gas and electricity?

Q4. Do respondents agree that any limit to backbills should be applicable to both domestic consumers and microbusinesses?

Q5. Do respondents believe that Ofgem's definition of "customer fault" is applicable to NI energy market? If not, please provide clear rationale why or identify what additional factors / scenarios should be considered

Q6. Do respondents agree that any limit to backbills should be applicable to all payment types?

Q7. Can respondents outline the expected cost faced by suppliers to implement the system and organisational changes required to administer a limit on backbills?

Q8. For electricity, in situations where the implementation of a backbill limit will result in the supplier facing use of system charges beyond the period of

the backbill, and the supplier is not at fault, how do respondents believe this should be dealt with?

Q9. How, and to what extent, do respondents believe these issues can be mitigated in order implement a backbill limit that ensures no customer is billed for energy consumed over 13 months prior?

Q10. Do respondents agree that any limit on backbills should be enforced through the creation of a new licence condition?

5.2. Responses to this consultation should be forwarded to reach the UR on or before 4pm on 14 February 2019 to:

Colin Magee
The Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED
Email: Colin.Magee@uregni.gov.uk

Next Steps

5.3. Once all the responses to this consultation paper are received and analysed, the UR intends to issue a decision paper which will analyse stakeholders' responses to this consultation. The anticipated timeline for this report to be issued is in early 2019.