

Email from Ofgem 07/11/13

Thank you for forwarding on the advice from Wragges & Co regarding the application of the Limitations Act to DCP 173.

- Your advice concentrates on whether suppliers have to make a repayment in situations where they have been undercharged, and notes that this would depend on the terms in the supply contract.
- The advice further states that the Limitations Act does not apply to DCP 173, as it is not concerned with a breach of contract. However, DCP 173 would not affect consumers' right of recovery against suppliers in instances where their customers were seeking redress from over recovery of charges in situations where the customer has been initially placed on the wrong tariff by the DNO and is then moved to the correct tariff, once the mistake has been discovered. This mistake is actionable under law and that right of action lies with the customer against the supplier. Unless this scenario is specifically contracted out of by the supplier, the effect of the proposal will be to place them at risk of having to refund their customer, but not be able to seek redress from the DNO who has effectively achieved a windfall.
- Unless the right to recover is specifically limited within the supplier's contract with its customers, we consider that there may be a risk that suppliers would be at a financial disadvantage and, in cases where the customer has been overcharged, their customers may still be able to bring a claim for the full amount of the overcharge, as they are not parties to the DCUSA and are not limited by any time frames it may contain.
- In light of the above, we would like to raise a couple of issues the working group may wish to consider:
 - What arrangements are included in supply contracts for situations where under or overcharging has occurred?
 - In particular, in cases where a customer has been overcharged, would a supplier be liable for a greater period of repayment to the customer than a set time period agreed between DNOs and suppliers under DCUSA?
 - What impact would such a scenario have on a small supplier with a few large customers, if they had to make a significant back payment to one of them?
 - Given that there is potential that customers may have to make a repayment, has work been done to identify the potential scope of the issue and how many customers are likely to be liable to make a repayment?
 - Several of the DNOs indicated their current systems would not enable them to automatically process refunds further back than 14 months. Has work been done to identify the difficulty of updating their systems or making these changes manually and the potential cost?

Please note, the purpose of the above is to facilitate discussion and they do not represent a final decision or in any way pre-empt the Authority's decision, following receipt of the Final Modification Report.