

DCP 439 Working Group Meeting 04

13 June 2024 at 10:00 - Web-Conference

Attendee	Company
Working Group Members	
David Fewings [DF]	Inenco
Edda Dirks [ED]	SSE
Emma Clark [EC]	SSE
Joe Boyle [JB]	SPEN
Karl Maryon [KM]	Drax
Louise Wardle [LW]	NPg
Michael Hewitson [MH]	Trident Utilities
Peter Waymont [PW]	UKPN
Robert Mottershead [RM]	Sedulity Energy
Simon Vicary [SV]	EDF
Victoria Burkett [VB]	SSE
Gus Wood (GW)	Gowlings
Code Administrator	
Andy Green [AG]	Chair
Apologies	
Chris Ong [CO]	UKPN
Ryan Farrell [RF]	NPg
Lee Stone (LS)	Npower
Hannah Proffitt [HP]	Secretariat

1. Administration

Recording

- 1.1 The Chair asked members if they were comfortable for this Working Group to be recorded. No members objected to this request. The purpose of this recording is purely to aid the Technical Secretariat in producing an accurate report of the meeting. The recording will be deleted after 15 Working Days.

Apologies

- 1.2 Apologies are noted in the table above.

Competition Law Guidance and Terms of Reference

- 1.3 The Working Group reviewed the “Competition Law Guidance” and “Terms of Reference”. All Working Group members agreed to be bound by the Competition Law Guidance for the duration of the meeting and agreed to the Terms of Reference.

Minutes of the previous meeting

- 1.4 The group approved the minutes without amendment.

Action Log

- 1.5 The group reviewed the actions. A summary can be found in the Appendix.

2. Purpose of the Meeting

- 2.1 The Chair set out that the purpose of the meeting was to air views of how the limitations act may interact with this change and then to review the Draft Consultation in readiness for issuing to industry.

3. Limitations Act Discussion

- 3.1 The Chair invited the legal advisor from Gowlings to explain how the limitations act could interact with this change and noted that there were a few scenarios and areas that the Working Group wanted to gain a better understanding of.
- 3.2 The proposer explained that that the charging statements highlight if tariff changes are made, they can go back six years and explained that was in line with the limitation act.
- 3.3 The proposer went on to say that the question that needs answering is, if the DCUSA is updated to state that tariff changes will only be back dated as far back as RF (14 months currently and 4 months post MHHS), does that mean that the limitations act doesn't apply, as the DCUSA has agreed something else.
- 3.4 The legal advisor agreed that this is fundamentally the question stating that the period of the limitations act, noting that there are different time periods in England/Wales (6 years) to that in Scotland (5 years) doesn't mean that the DCUSA can't agree shorter period if its agreed that's the right approach to take.

- 3.5 The legal advisor went on to state that the answer to the above question is that the limitation Act wouldn't prevent any claims being brought. What will prevent these claims being brought is if a different timescale is agreed within the DCSUA. Meaning that if it is written into the DCUSA that back dating will have a cut off at RF, then that will apply contractually.
- 3.6 It was noted that whilst the limitation act wouldn't prevent the DCUSA rules being changed to a shorter time period, the issue would then centre around whether that's a fair, reasonable and sensible change to make.
- 3.7 It was noted that a series of scenario and examples had been shared with the legal advisor which the Working Group wanted to gain a better understanding of and requested that a written summary was provided which could be shared within the consultation.
- 3.8 These scenarios and areas were.
- *Where a customer has told a Supplier/ of something (i.e. sent in a non-final demand certificate) and this has not been acted upon within the 14-month window.*
 - *A change in the applicability of a specific tariff that the customer wasn't aware needed to be communicated to the supplier/distributor but is being raised after 14 months.*
 - *A change in the applicability of a specific tariff, that is outside the customers control, that needs to be back dated more than 14 months.*
 - *A customer has found out that they were incorrectly charged in a period starting 4 years ago, ending 3 years ago, and hasn't had a refund and is bringing the claim now. What does the limitations act say should happen in this scenario.*
 - *Does this proposal affect that claim and would this be in line with the provisions of the limitations act?*
- 3.9 A summary of the legal advice is below.
- *The current 6-year limit on backdating changes to charges is broadly consistent with the statutory limits that apply to claims. For example, under the Limitation Act 1980, claims for breach of contract must be brought within 6 years of the breach, and claims for mistake must be brought within 6 years from the date from which the claimant discovered the mistake (or could with reasonable diligence have done so).*
 - *The time periods provided for in the Limitation Act 1980 are absolute backstops, beyond which claims are barred by statute. However, parties can agree shorter time periods if they wish to do so.*
 - *There is therefore no legal prohibition which would prevent the DCUSA being amended to provide for a restriction on back-dating of less than 6 years.*
- 3.10 It was noted that the legal text referred to back dating as far back as RF which is currently 14 months and that this will change with the delivery of the MHHS program to 4 months.
- 3.11 It was noted that this was in line with the approach of the forward fixing approach that other industry programs such as MHHS and Ofgem's Faster Switching program were taking.

4. Review/Update Draft Consultation

- 4.1 The Working Group went on to discuss the Consultation document with a Working Group member initially stating that they believe that there should be some text to explain the fairness issue that was mentioned in the limitation's discussion was included.
- 4.2 Another Working Group member raised if there could be a question put to industry asking if there was any other potential solutions or timescales that could be used other than RF.
- 4.3 It was agreed to include these two areas in the form of consultation questions.
- 4.4 The proposer again stated back dating tariff changes to RF was consistent with the approaches taking by other industry programs.
- 4.5 It was queried if the DNO billing system that was being introduced had a strict limitation on backdating tariff changes when an MPAN had migrated or if it was still able to back date migrated MPANs.
- 4.6 PW Took an action to ask St Clemmen if there was a hard and fast limitation on back dating post migration or if the new system allowed back dating to RF.

Action 04/01 – PW to confirm if there is a strict limitation on back dating tariffs/LLFC post migration in the new DNO billing system.

- 4.7 It was queried if the other obligations that are placed on suppliers and distributors to make sure that customers were on the right tariffs could be strengthened as part of this change.
- 4.8 It was highlighted that this was out of scope as this change was purely looking at the back dating of tariffs. It was noted that if DCUSA members wanted to take this approach, they could raise a new change proposal.
- 4.9 It was also asked what the approach would be should this change be rejected, and the proposer advised that it would either entail running the legacy system for a period of time or migrating all the data over from the legacy system in the new system. It was explained that both approaches would be a costly exercise for such low volumes of customers.
- 4.10 It was agreed to make reference in the consultation document to the forward fixing approach that this change was seeking to take and that other industry programs such as MHHS and Ofgem's Faster Switching program took the same approach to correcting data.
- 4.11 The Working Group agreed to ask the below questions within the consultation.
 - Do you understand the intent of the Change Proposal?
 - Are you supportive of the principles that support this Change Proposal?
 - What's your experience of backdating DUoS tariffs in practice (what works well, what doesn't work well etc)?
 - For suppliers only- If you're no longer the supplier for an MPAN, what is your process for back billing customers and refunding/debt collection? Do you follow the same process for COT customers?

- Are there any other industry codes that may be impacted by this change? Please elaborate on what these codes are.
- If this change is not implemented what are the potential impacts ie system constraints, additional manual intervention etc
- Are there any solutions that have not been considered by the Working Group? Please elaborate on what these solutions are.
- Are there any other time periods that may be considered more appropriate. Please elaborate on which timescales, barriers to implementation and ways to overcome these?
- What would be the impact to customers if this change were to be implemented?
- Is the RF period a suitable time for these errors to be identified and resolved? Who do you believe should be responsible for identifying any network charging errors within the RF period (14 months currently, 4 months post MHHS), i.e. customers, suppliers, distributors etc? Please provide rationale.
- Do you have any comments on the legal advice received on the limitations act?
- Do you have any comments on the drafted legal text?
- Do you consider the solution better facilitates the DCUSA objectives? Please give supporting reasons
- Are you aware of any wider industry developments that may impact upon or be impacted by this CP?
- What date do you believe this change proposal should be implemented? Please provide rationale.
- Do you have any other comments?

4.12 It was agreed to issue this consultation to industry on 13 June 2024 with a closing date of 05 July 2024.

4.13 It was agreed to include the written legal advice around the limitations act as a separate attachment rather than include it within the body of the consultation.

4.14 It was agreed to set a meeting date of 12 July 2024 at 10am for the Working Group to reconvene and review the consultation results.

5. Any Other Business

5.1 No other business was raised.

New and Open Actions

Action Ref.	Action	Owner	Update
04/01	PW to confirm if there is a strict limitation on back dating tariffs/LLFC post migration in the new DNO billing system.	HP	Closed

Closed Actions

Action Ref.		Update	
02/01	The Chair to draft a pre consultation RFI and issue to Distributors following the meeting.	The Chair	Action closed. RFI issued on 20 May 2024.
03/01	Secretariat to review the recording of the previous meeting to find discussion on why LV to HV should not be included in the table.	HP	Closed
03/02	Members to remove irrelevant cases from 'other' column of question 2 and provide updated volume.	Members	Closed
03/03	The Chair to contact the Market-wide Half-Hourly Settlement (MHHS) Programme to see how they are approaching similar scenarios regarding backdating.	The Chair	Closed
03/04	The Chair to send WGs questions to Gowling and to ask Gus Wood to attend the next meeting to discuss.	The Chair	Closed