Action 0004: GE to provide an alternative legal view on the Limitation Act 1980.

Please find below the detail promised at the last distribution workgroup.

The Limitation Act 1980 limits any pursuit of commercial debt to a period of six years. Furthermore, the Unfair Contract Terms Act 1977 prevents Shippers from aligning their and their customer's cost exposure to the timescales of the UNC process when a clear settlement error has occurred. This means that there is currently a gap between the period for which a Shipper or customer can claim back costs incurred under their commercial arrangements, and the period for which settlement accommodates this correction. This does not prevent Shippers from attempting to recover the costs they have unduly incurred through incorrect allocation. As acknowledged by Ofgem in their decision letter for UNC Modification 0152AV:

"The reconciliation process is not in itself a remedy for contractual breach but a discrete operational process provided for and operated in accordance with the UNC contract. Where contractual obligations are imposed on parties breaches of these obligations may give rise to contractual claims and the Limitation Act provides that such claims would, as a general rule, have to be brought within six years. This is not affected by the length of time within which reconciliation can occur".

We agree with Ofgem's assessment that Shippers still have the right under contractual law to correct the cost allocation in the event that there has been a clear error. In this case the billing error would sit with the organisation that has undertaken the energy allocation or transportation activity. At present however there is no clear mechanism for this to occur and a Shipper will have to rely on a legal process to correct any significant cost error, which is a significant cost in particular for smaller suppliers**.**

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