# Representation

## Draft Modification Report

### 0395: Limitation on Retrospective Invoicing and Invoice Correction

**Consultation close out date:** 03 February 2012

**Respond to:** enquiries@gasgovernance.co.uk

**Organisation:** Consumer Focus

**Representative**: Richard Hall

**Date of Representation:** 01 February 2012

**Do you support or oppose implementation?**

Support

**Please summarise (in one paragraph) the key reason(s) for your support/opposition.**

0395 is a sensible improvement to the existing arrangements. It would increase incentives on shippers to get accurate meter data into settlement quickly, which should increase incentives on suppliers to also resolve consumer-facing issues with outstanding meter read issues more quickly. It would also reduce the risk of retrospective corrections to settlement data, which should reduce the risk of participating in the market. We note the arguments raised by some industry parties that this proposal would be incompatible with the Statute of Limitations but think this is a red herring; similar arguments were raised at the time of modification 152V and were deemed irrelevant by Ofgem. I&C Shippers have had four years since then to come up with a better explanation of why it is relevant and have still failed to do so.

**Are there any new or additional issues that you believe should be recorded in the Modification Report?**

No, although we do wish to comment on some of the existing issues that have been raised – see our answer to the "Is there anything further you wish to be taken into account?" question at the bottom of this response.

**Relevant Objectives:**

*How would implementation of this modification impact the relevant objectives?*

We consider that objective (d) (securing of effective competition between Shippers) would be better facilitated. Implementing 395 would mean that settlement liabilities would become fully firm much sooner than they currently do and this stability, and reduction in participation risk, should reduce barriers to entry and expansion.

We consider that objective (f) (promotion of efficiency in the implementation and administration of the Code) would also be better facilitated. This is because 395 should allow for a reduction in the number (and therefore cost) of reconciliations.

**Impacts and Costs:**
*What analysis, development and ongoing costs would you face if this modification were implemented?*

Back-billing causes consumer detriment. In 2010 Consumer Direct received 1,848 complaints from micro-businesses who got unexpected bills after their energy charges were initially underestimated. Approximately 40% of the energy related complaints that Consumer Direct gets from micro-businesses relate to back-billing. Increased incentives on suppliers to get decent meter read data in to settlement quickly are very much in consumer interests.

**Implementation:**
*What lead-time would you wish to see prior to this modification being implemented, and why?*

As soon as possible, in order that the benefits crystallise as soon as possible.

**Legal Text:**
*Are you satisfied that the legal text will deliver the intent of the modification?*

We have not reviewed the legal text.

**Is there anything further you wish to be taken into account?**
*Please provide any additional comments, supporting analysis, or other information that that you believe should be taken into account or you wish to emphasise.*

The argument concerning the relevance of the Limitation Act to reconciliation processes was extensively explored and dismissed at the time of 152V. Ofgem's view, informed by legal advice, was that the reconciliation process is a 'business as usual' process carried out in accordance with the UNC contract and not a mechanism for remedying breaches in contracts between suppliers and consumers. In any event, contractual claims under the Limitation Act are (in its words) 'not affected by the length of time within which reconciliation can occur'.

The relevant parts of the 152V decision are copied below:

*"Although the Limitation Act was raised as an objection to a limit of less than six years by some industry respondents, we consider that it is not of significant relevance to our decision. 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, albeit it may have the practical effect of rectifying some contractual breaches (depending on the circumstances that caused any corrected data to flow into the reconciliation process). 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. Given this we do not consider that it is necessary for the period within which reconciliation can be made to be equivalent to the six year period in which a contractual action would have to be brought under the Limitation Act.*

*Respondents who held the view that they may be subject to financial risk resulting from customer claims should the code reconciliation window be shorter than the contractual claims window allowed for by the Limitation Act have not explained how such a risk could arise in practice or provided any evidence to suggest the likely frequency or magnitude of any such 'shortfall' event. We have tried to identify potential scenarios where such 'shortfall' could occur and have concluded that this is likely to be a limited risk. In addition, the Shippers may be able to mitigate this risk through its contracts with the end customer. […]"*

The argument made against both 395 and 398 that introducing a constraint on retrospective data correction would be a 'doomsday' intervention that would put I&C Shippers out of business was also aired at the time of 152V. Manifestly, it has not done so. Given that this prediction was demonstrably wrong first time around, we struggle to see why it would be any more right second time around.

The electricity market has had a theoretical (i.e. unused) backstop of 40 months, and a practical backstop of 14-28 months[1], since NETA go-live in 2001. The gas Reconciliation by Difference process is a close cousin of the electricity Group Correction Factor process, and the electricity market faces many of the same kind of data issues as the gas market – with meter errors, or corrections to estimates once actual meter reads come in, causing retrospective correction to energy smeared across domestic supply points. Yet this shorter timeframe has been proven to work perfectly adequately in electricity and is not even mildly controversial in that market. What is so different about gas?

We note the argument that the shorter the reconciliation window is, the more error that will be uncorrected. There is some logic to this argument, although it also has weaknesses. For example; following that argument to its logical conclusion would suggest that the reconciliation window should be infinite, because that way no error would be timed-out from correction.

In practice, we think a balance needs to be found between settlement accuracy (which is best facilitated the longer the reconciliation window is) and settlement certainty (i.e. of liabilities) (which is best facilitated the shorter the reconciliation window is). The analysis presented in Table 1 of the modification report suggests that reducing the reconciliation window to 2-3 years would have minimal, if any, adverse effect on settlement accuracy. We also think that it is likely that Shippers and Transporters would respond to a constriction in the timescale for sorting out data problems by taking steps to resolve them more quickly; people work to

[1] The final scheduled settlement run ('RF') takes place after 14 months. The BSC explicitly precludes any settlement runs after 28 months. An Extra Settlement Determination may still take place if data is available, but there is no requirement on any party to keep data for more than 40 months after a settlement date. In practical terms, all data corrections therefore time out after 40 months – though we are not aware of any cases where a correction has taken place this long after a settlement date in any event.

deadlines in most walks of life and it would be worrying if the gas industry is somehow immune to such pressures.

Although the 'must read' statutory obligation for metering is one read every two years, this is a legal backstop rather than an aspiration. In practice most suppliers read meters far more frequently – all of the Big 6 suppliers attempt at least two meter reads per year and three out of six attempt four reads per year[2]. Suppliers should be sorting out data problems well within the three years that this modification allows (for settlement purposes).

Allowing settlement liabilities to become fully firm two years more quickly than they currently do should also significantly reduce supplier exposure to the risk of cashflow shocks caused by retrospective corrections. The cost of this risk is ultimately borne by consumers, although the materiality is currently unclear.

[2] Source: Ofgem factsheet "Direct Debits: what you need to know".