

# Protecting customers in the non-household retail market – a consultation

## About this document

This document sets out our proposed approach to protecting customers in the non-household retail market in England and Wales, through the introduction of a new Customer Protection Code of Practice.

Retail services include activities such as billing and customer services and at the moment, only a limited number of non-household customers across England and Wales can choose their retailer. Most customers must use services provided by their local monopoly water only or water and wastewater companies. The Water Act 2014 will allow eligible non-household customers to choose their supplier of water and wastewater retail services from April 2017. For customers who use the supply system of an appointed company whose area is wholly or mainly in England, the market will be extended to include all non-household customers. For those who use the supply system of an appointed company whose area is wholly or mainly in Wales, the market will not be extended, reflecting the different policy position of the Welsh Government. More information on which customers are eligible is available in chapter 1 of this document and [our eligibility guidance](#).

The new market is expected to deliver [about £200 million of overall benefits to customers and the UK economy](#) and research shows that [seven out of ten non-household customers want this choice](#).

Customers will be able to shop around and switch to the best deal. Investors and retailers will have new opportunities for growth. And the [environment will benefit from customers using new water efficiency services](#). Customers are already benefiting from [a similar market in Scotland](#).

Opening the new market is a complex challenge but it is [on track to open in April 2017](#). The design is almost complete, and work is now being carried out to deliver the technical systems, checks and ways of working that are needed to get the market right for customers. A key element of this will be to ensure that customers are appropriately protected in the retail market.

This document is part of a suite of consultations focusing on customer protection arrangements that will be necessary to ensure that the new retail market operates effectively and in the best interests of customers. We explained this in more detail in [‘IN 15/12: Opening a new retail market for non-household customers – protecting customers’](#).

The proposals set out in this consultation are in addition to those in relation to interim supply, deemed contracts, and the Guaranteed Standards Scheme, which we have already published for consultation. We are also currently consulting on [proposals for reviewing non-household retail price controls](#).

The best way to protect customers in the new retail market is to make sure that the market arrangements are effective, allowing for high levels of rivalry and innovation in the market, as well as avoiding unnecessary or onerous burdens on retailers that can create undue barriers to entry and expansion. Indeed [research](#) conducted with non-household customers directly may suggest that they favour ‘market freedom over protection’. But we recognise that there will be certain additional specific measures that are required to protect customers. Such measures have the potential to hinder the development of the market, and we will need to consider carefully how and when we introduce them.

For many, particularly larger, non-household customers, they will enjoy relatively higher levels of buyer power in their relationship with their retailer, which could imply less of a need for additional regulatory protections. However, we do consider that some, particularly smaller, non-household customers that may not enjoy this higher buyer power and face other constraints and so may need additional regulatory protection in certain areas, to build and retain trust and confidence in the retail market and the water sector as a whole. Indeed, the experience in other sectors may suggest that their behaviour and bargaining position in a competitive retail market is more aligned with that of household customers.

The proposed Customer Protection Code of Practice would apply to all eligible non-household customers in England and Wales. For customers of appointed companies operating wholly or mainly in Wales, this would only be the larger customers using more than 50 million litres (megalitres – Ml) of water each year. As many of our proposals set out in this consultation are designed to protect smaller non-household customers, they are unlikely to apply to those larger customers of companies operating wholly or mainly in Wales, but this will depend on how we define smaller customers. We discuss this in more detail in chapter 1 below.

The proposals set out here reflect our current thinking on the measures we need to take to ensure that customers are protected in the early stages of market opening. We recognise that as the market operates and matures, information will be revealed about customers’ experience in the market, which may mean we need to look again at where, when and in what form measures are needed to protect customers beyond those needed to make the market effectively competitive.

We are very interested in stakeholders' views on the issues discussed in this consultation, especially those of non-household customers and customer organisations.

## Contents

Responding to this consultation	4
Summary of consultation questions	5
1. Introduction	7
2. Sales and marketing activities	17
3. Contracts and information	25
4. The switching process	36
5. Billing, back-billing and data quality issues	45
6. Complaints handling and dispute resolution	54
7. Summary and next steps	59

## Responding to this consultation

We welcome views on all aspects of our proposals, both in response to this consultation and through forthcoming workshops.

We welcome your responses to this consultation by **11 January 2016**. Please submit responses by email to [customerprotection@ofwat.gsi.gov.uk](mailto:customerprotection@ofwat.gsi.gov.uk), or post them to:

Retail Market Opening Programme  
Ofwat  
4th floor  
21 Bloomsbury Street  
London WC1B 3HF.

If you wish to discuss any aspect of this consultation, please contact Rowaa Mahmoud on 0121 644 7503 or by email at [rowaa.mahmoud@ofwat.gsi.gov.uk](mailto:rowaa.mahmoud@ofwat.gsi.gov.uk).

We will publish responses to this consultation on our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk), unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice', which deals, among other things, with obligations of confidence. 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 we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

## Summary of consultation questions

Throughout this consultation, we raise a number of questions, which we have summarised here. As well as responses to these specific questions, we welcome views from stakeholders on any of the issues raised in this consultation.

### Consultation questions

**Q1** Do you have any comments on our proposal to introduce a mandatory Customer Protection Code of Practice to protect customers in the non-household retail market?

**Q2** What do you think we should consider when defining smaller customers (micro-businesses, small businesses and SMEs)?

**Q3** Should the proposed additional protections for smaller customers apply to just micro-businesses, or small businesses, or all SMEs?

**Q4** Do you agree with our proposals to use the Customer Protection Code of Practice to protect micro-businesses from certain sales and marketing activities?

**Q5** Do you agree with our proposal to require retailers to provide certain basic information in a standard format to allow micro-businesses to compare deals?

**Q6** Do you agree with our proposal to require retailers to make sure that any TPIs acting as agents on their behalf are aware of, and understand, how the provisions of the Customer Protection Code of Practice apply?

**Q7** Do you have any comments on our plan to explore the possibility of requiring retailers to only interact with TPIs that have signed up to a set of standards, either through an accreditation scheme or another voluntary code of practice?

**Q8** Do you agree with our proposal to use the Customer Protection Code of Practice to set specific standards of conduct for retailers in relation to contracts with micro-businesses? Do you have any comments on the issues that we propose to cover?

**Q9** Do you agree with our proposal to include a requirement in the Customer Protection Code of Practice for retailers to provide certain information to all eligible non-household customers, and additional information to micro-businesses?

**Q10** Do you have any comments on the information that needs to be provided to customers?

**Q11** Do you agree with our proposal to require retailers to offer a cooling off period of at least seven calendar days to micro-businesses? Should a cooling off period be offered to all eligible non-household customers, and if so, should customers be allowed to opt out of any such cooling off period?

**Q12** Do you agree with our proposal to require retailers to take active steps to confirm that micro-businesses are aware of, and understand, the terms of the contract before they agree to it?

**Q13** Do you agree with our proposal to require retailers to obtain a copy of written confirmation that a TPI is acting on behalf of a customer, before sharing any details about that customer with the TPI?

**Q14** Do you have any other comments on our proposals in relation to contracts and information to be provided to customers?

**Q15** Do you have any comments on the proposed timeframe of 6 to 20 working days for the switch to take place, with a retailer and customer able to agree a named day for the switch?

**Q16** Do you agree with our proposal to use the Customer Protection Code of Practice to require retailers to take all reasonable steps to ensure they have a valid contract with the customer before they request a switch?

**Q17** Do you agree with our proposal to require an outgoing retailer to inform the affected customer of the reason for any cancellation of the switching process, and advise the customer on the process and timeframe to resolve the issue?

**Q18** Do you have any comments on whether or not outgoing retailers should be allowed to cancel a switch on the basis that the customer has an outstanding debt?

**Q19** Do you have any comments on our proposal to monitor the use of the switching process, including use of the erroneous transfer and cancellation processes, after the market opens?

**Q20** Do you agree with our proposal to require retailers to issue at least one accurate bill each year to micro-business customers and, for metered micro-business customers, to take a meter reading at least twice a year?

**Q21** Do you agree with our proposal to require retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract?

**Q22** Do you agree with our proposal to require retailers to base their final bill on the transfer read provided by the incoming retailer?

**Q23** Do you have any comments on our proposal to do nothing further at this time in relation to billing frequency and payment methods (except for micro-businesses as above)?

**Q24** Do you have any comments about the information that should be provided to customers on their bills?

**Q25** Do you agree with our proposal to use the Customer Protection Code of Practice to prevent retailers from back-billing eligible non-household customers unless the customer has behaved inappropriately?

**Q26** Do you agree with our proposal to require retailers to offer micro-businesses a reasonable payment plan with any back-bill, to allow the customer to pay the bill in a number of instalments?

**Q27** Do you have any comments on our proposal to take no further action in relation to refunds (other than to make sure that customers have access to a quick and effective dispute resolution process)?

**Q28** Do you have any comments on our proposal for no additional regulation on data quality?

**Q29** Do you agree with our proposal to use the Customer Protection Code of Practice to require all retailers to have an effective complaint handling process in place?

**Q30** Do you agree with our proposal to use the Customer Protection Code of Practice to require all retailers to join the WATRS water redress scheme, if they have not already done so?

## 1. Introduction

### 1.1 Background

At the moment, only a limited number of non-household customers across England and Wales can choose their retailer. Most customers must use services provided by monopoly water only or water and sewerage companies. They must use the company that is appointed to serve their local geographical area.

The Water Act 2014 will allow eligible non-household customers to choose their supplier of water and wastewater retail services from April 2017. Retail services include activities such as billing and customer services. We recently issued [more detailed guidance on eligibility](#), but briefly, for water supplies, eligible non-household customers are:

- non-household customers whose premises are supplied with water using the supply system of a water company whose area is wholly or mainly in England; or
- non-household customers whose premises are supplied with water using the supply system of a water company whose area is wholly or mainly in Wales and to which the total quantity of water estimated to be supplied each year is not less than 50MI.

For wastewater services, eligible non-household customers are customers whose premises are supplied with wastewater services using the wastewater systems of undertakers whose area is wholly or mainly in England. Eligible non-household customers will be able to choose between:

- new entrant retailers licensed under the new ‘retail authorisations’ (water supply and sewerage service licences or ‘WSSLs’) introduced by the Water Act 2014; or
- existing companies that are appointed as water and sewerage companies under the Water Industry Act 1991 (WIA91) – what we call ‘appointed companies’.

### 1.2 Purpose of this consultation

To prepare for the opening of the retail market, we have started to consider the customer protection issues that may arise in the new market, and what action we may need to take to address those issues. This is in accordance with:

- our statutory duties including in particular our duties to:
  - protect the interests of consumers, wherever appropriate by promoting effective competition;
  - further the resilience objective; and
  - ensure that the activities authorised by a licensee and the functions of appointed companies are properly carried out; and
- our shared vision for the water sector that customers and wider society have trust and confidence in vital public water and wastewater services.

Applying our strategic risk-based approach, this consultation outlines a number of areas where customers may need additional protection in the retail market, and seeks views on possible regulatory measures to protect them. In particular, we are considering various sales, marketing, contractual and switching issues that we may need to address before the retail market opens in April 2017.

This is the first part of a two-stage consultation process – with this document focusing on our proposed policy approach. We will then follow this up with a second consultation in early 2016 on the proposed detailed drafting of any customer protection rules that are required for the retail market.

### **1.3 Protecting customers through choice**

One of our statutory duties is to further the ‘consumer objective’, which is to protect the interests of consumers, wherever appropriate by promoting effective competition. In line with this and our other statutory duties, our new strategy is to help maintain and improve the trust and confidence of customers in the sector – ‘[Trust in water](#)’.

The best way to protect customers in the new retail market is to make sure that the market arrangements are effective, allowing for high levels of rivalry and innovation among retailers with the benefits of that process passed on to customers. Effective competition requires customers to have the freedom to switch or negotiate better deals. Making sure that a customer can choose a different retailer and switch to them in a simple and timely fashion provides customers with the ability to negotiate the range and quality of services that they want, at the best possible price.

But we recognise that the experience of other sectors may suggest that there could be certain situations in which additional specific regulatory measures are required to protect customers when things go wrong. Such measures have the potential to hinder the development of the market, for example by introducing barriers to entry or expansion that constrain entry and choice in that market or by placing constraints on the customer switching process, and we will need to consider carefully how we use them.

Separately, we have also considered how best to protect customers that, having chosen not to switch, are allocated to a different retailer if their existing retailer leaves the market. Our proposals in this area are set out in our consultations on [interim supply arrangements](#) and [deemed contracts](#).

The new retail market will be for non-household customers, who may generally possess higher levels of buyer power than, for example, household customers. However, we know from other sectors that smaller non-household customers, for example small and medium-sized enterprises (SMEs) and particularly micro-businesses, may require additional protections. Indeed, their behaviours and bargaining positions may well be more consistent with that of household customers and there is other evidence that these groups may need additional regulatory protections. The [preliminary findings](#) of the Competition and Markets Authority (CMA) investigation into the GB energy market similarly found that the margins for micro-business customers (Earnings Before Interest and Tax) of the Six Large Energy Firms in the Small and Medium-sized Enterprise (SME) markets were 8.4%, compared with 3.3% in the domestic markets.

The UK Government's recently published competition plan [A better deal: boosting competition to bring down bills for families and firms](#) states:

“The government will therefore ensure greater focus on the needs of small businesses through the Policy Statements it gives to Ofgem and Ofwat, which give guidance on their policy priorities. The government will ask the regulators to look in particular at giving small businesses further protections, for example, to protect them from mis-selling, ensure more transparent prices and to make switching easier.”

We note that the competition plan requires us to consider the scope and benefits for extending the retail market to cover households. Were such a step to be taken we recognise that the protections being proposed in this consultation for non-household customers may not be appropriate for household customers.

We have also considered the research carried out by the Consumer Council for Water (CCWater) in relation to the retail market, including [‘Lessons learned: A cross-sectoral study of issues that have been detrimental or a risk to customers through the introduction of market reform’](#) and [‘Uncharted waters: Non-household customers’ expectations for competition in the water industry’](#).

In the early stages of the development of the market, we expect that there could be:

- lower levels of customer awareness of the market and the switching process; and
- a proportion of non-household customers who do not engage with the market either to switch to a different retailer, or to negotiate a better deal with their existing retailer (these customers are sometimes referred to as ‘sticky’ customers).

Similarly, the sector has not previously seen retail competition on this scale, and when the market opens there may be a range of different behaviours by retailers that we may not have been able to predict. Indeed greater innovation is an outcome that we are seeking from these new arrangements.

As part of our examination of these issues, we have also considered:

- lessons from the water retail market in Scotland, and other regulated sectors, including energy, telecommunications and financial services; and
- existing research as well as comments and feedback provided in a number of different workshops and other stakeholder meetings and events, including with the Federation of Small Businesses (FSB), CCWater and members of its Business Customer Forum, the Major Energy Users Council (MEUC), as well as retailers and appointed companies.

## **1.4 Legal framework and our next steps**

We have published an overview of the [legal framework for the non-household retail market](#).

The part of the framework most relevant for customer protection is the proposed Customer Protection Code of Practice. This is referred to as the Customer Code of Practice in the legal framework document. We have changed the name slightly to better distinguish it from the Code of Practice for Customers that appointed companies are required to have under condition G of their Instrument of Appointment, which focuses mainly on household customers). As we previously indicated in [‘IN 15/12: Opening a new retail market for non-household customers –](#)

[protecting customers](#)', we consider that a mandatory code of practice for retailers would be required to protect customers.

The proposed Customer Protection Code of Practice would be a possible mechanism for us to address some of the customer protection issues set out in this consultation. We have considered leaving some of these issues to be resolved through industry self-regulation, which may include a voluntary code of practice. Our initial view is that such self-regulation is unlikely to be effective in the early stages of the market, and would not necessarily protect customers of all retailers. As customer protection is a vital part of developing effective competition, and gaining customers' trust and confidence in the market and the wider sector, at this point we consider that a mandatory code of practice will be required.

So, we are considering whether and if so, how we could use a condition or conditions in both the WSSL and Instrument of Appointment to create an obligation for all retailers (WSSL retailers and appointed companies) to comply with a single Customer Protection Code of Practice. One benefit of such an approach would be to ensure that all retailers comply with the same set of rules. This will help to ensure a level playing field between retailers, and protect all eligible non-household customers. If we simply rely on a voluntary approach, or rely on WSSL retailers and appointed companies to adopt their own code of practice to cover specified matters (like the approach to the current Code of Practice for Customers under condition G of the Instruments of Appointment), there would be a risk that not all retailers comply with it or that they do so inconsistently to the detriment of customers.

The rest of this consultation explores the possible issues that we may need to address, together with our proposals to address those issues. Subject to the outcome of this consultation, we will then consider whether the proposed Customer Protection Code of Practice is a suitable mechanism to address those issues (or whether other aspects of the legal framework such as the [Wholesale–Retail Code](#) would be more appropriate), and consult on the drafting of the proposed Customer Protection Code of Practice itself – and for the process by which it could be updated or amended in the future – in early 2016.

A draft licence condition that will require all WSSL retailers to comply with such a Customer Protection Code of Practice forms part of the draft WSSL conditions provided to Defra that it will consult on shortly. We intend to consult appointed companies separately about the inclusion of a similar licence condition into their Instruments of Appointment, which would require them also to comply with the Customer Protection Code of Practice. We propose to do this alongside our planned consultation on the drafting of the Customer Protection Code of Practice in early 2016.

**Proposal 1: We propose that all retailers would be required to comply with a new Customer Protection Code of Practice, which would include certain provisions to protect non-household customers in the retail market, as discussed in this consultation. This would be subject to further consultation on the detailed drafting of the Customer Protection Code of Practice and the process for amending or updating the Customer Protection Code of Practice in the future. The Customer Protection Code of Practice would be mandatory because it would be the subject of a condition in both the WSSL and Instruments of Appointment, each of which will be consulted on separately.**

## **1.5 Our policy objectives**

In designing the regulatory arrangements for the new retail market, we are required to have regard to the guidance we receive from the UK and Welsh Governments, and must always act in accordance with our statutory duties. Based on those statutory duties and the guidance we receive, we have developed objectives for our regulatory work in relation to the opening of the new retail market, which are set out on page 15 of our recent [consultation on deemed contracts](#).

As explained above, we need to balance these objectives to ensure customers are adequately protected, but in a proportionate and efficient way that does not create undue burdens or barriers to entry or expansion. Our aim for customer protection is to see confident, engaged and active customers that are able to make well-informed decisions.

Our research into other sectors suggests that non-household customers value:

- ease of switching;
- speed of switching;
- fair price/lower costs;
- simple, fair and clear terms and conditions;
- manageable bills (which are timely and accurate); and
- good customer service, and clear and effective complaint handling scheme.

So we consider that success would mean that non-household customers are:

- engaged in the market, and find the switching process simple to understand, easy to use and efficient;
- able to navigate the market easily and make informed decisions by understanding and comparing the different options;

- treated fairly by companies and know their rights and options, and what to do if something goes wrong; and
- appropriately and adequately protected, but that protection does not stifle innovation or competition.

## 1.6 The customer journey

Below we set out a diagram that shows the key steps that customers would take during their engagement with the market. There are two aspects of this process.

- The customer experience of changing to a different retailer.
- A set of processes and systems that market participants use to switch the customer, which would not be usually visible to the customer.

**Figure 1: Customer journey**



Having considered the different steps in the customer's journey above, we have identified the following areas for consideration.

- Sales and marketing activities, including the role played by Third Party Intermediaries (TPIs).
- Contracts and customer information.
- The switching process.
- Billing, back-billing and data quality.
- Complaint handling and dispute resolution.

We discuss each of these in more detail in the chapters that follow. As part of our examination of the customer protection issues in each of these areas, we have considered whether:

- any additional regulatory measures are required; and
- if we do consider that customers need additional protection, is that for all non-household customers, or just smaller customers?

## **1.7 Defining smaller non-household customers**

As explained above, we think that smaller non-household customers may need additional protection in some areas. For the purpose of our considerations about smaller customers, we are considering small- and medium-sized enterprises (SMEs). But we are also considering whether we should target any interventions to protect small SMEs that are usually referred to as small businesses, or the very smallest, which are described as micro-businesses.

There are various definitions of micro-businesses, small businesses and SMEs used by the European Commission, the UK Government and other public bodies, usually involving consideration of various combinations of:

- the numbers of individuals working for the organisation;
- turnover and/or balance sheet total of the organisation; and
- levels of consumption.

When considering the issues set out in this consultation, we are looking at whether smaller customers need additional protections to reflect the fact that those customers will not have the same resources available as larger customers. In our view, larger organisations would have access to more resources (including specialist advice if required). For this reason, it would seem appropriate to define smaller customers according to the number of individuals and/or turnover or balance sheet. Micro-businesses tend to be defined as those non-subsidary, independent organisations with fewer than ten individuals, small businesses with fewer than 50, and **SMEs with fewer than 250 individuals**. Indeed, where additional protections have been introduced in other sectors, they have tended to use these definitions.

Once the relevant sections come into force, section 33 of the Small Business, Enterprise and Employment Act 2015 will provide a definition for micro-businesses and small businesses according to the business headcount of staff (under 50 for small businesses, and under 10 for micro-businesses), and a turnover or balance sheet total less than the threshold for each which will be set in the Small and Micro-business Regulations (once made). Although not yet in force, this provides useful guidance when considering the most relevant definition for us to use.

But we are also considering customers' relative position in the market, recognising that certain customers will be more attractive to retailers, which is likely to mean that the balance of power between retailer and customer would work more to their advantage. Generally, it is likely to be larger customers that have higher consumption, but that will not always be the case. There may be some customers that would be regarded as SMEs or micro-businesses under a definition based on the size of the organisation, which are consuming higher volumes of water and/or requiring more wastewater services than their size may otherwise suggest.

We also recognise that retailers may find it easier to segment their customers according to consumption or use as that data will be more visible to retailers. Indeed appointed companies may already be taking this approach in their charging structures and the relationship with the default tariffs that they proposed through the 2014 Price Review process.

Micro-businesses are a sub-set of SMEs, and we recognise that if we just target protection towards micro-businesses there will be other SMEs that fall just outside the threshold of the definition of micro-business that could arguably require the same level of protection. We also recognise that retailers may find it simpler to apply the measures to all SMEs.

For the purposes of this consultation, we have proposed that certain protections would only apply to micro-businesses, but we are open to the possibility that those protections may be required for small businesses, or all SMEs.

We are very interested in stakeholders' views on how best to define micro-businesses, small businesses and SMEs as well as which customers are likely to need the additional protections proposed in this consultation.

### **Consultation questions**

**Q1** Do you have any comments on our proposal to introduce a mandatory Customer Protection Code of Practice to protect customers in the non-household retail market?

**Q2** What do you think we should consider when defining smaller customers (micro-businesses, small businesses and SMEs)?

**Q3** Should the proposed additional protections for smaller customers apply to just micro-businesses, or small businesses, or all SMEs?

## 2. Sales and marketing activities

### 2.1 Introduction

Sales and marketing activities can be an important part of a customer's decision to switch to a different retailer or contract. Customers need to have the necessary information to make well-informed decisions, without being misled or confused.

Generally, we would expect that customer protection issues in this area would arise in relation to household customers, rather than non-household customers. But we know from the experience in other sectors that certain sales and marketing activities can cause customer harm, particularly for the smaller (micro-businesses and other SMEs) non-household customers whose behaviour and bargaining position in other competitive retail markets has been shown to be more aligned with that of household customers than larger non-household customers.

It is also important to recognise the potential involvement of Third Party Intermediaries (TPIs) in this area – as we have seen active engagement by TPIs in other sectors and in the water retail market in Scotland. TPIs act as an intermediary between customers and retailers. For TPIs in other sectors, there are a variety of different business models, corporate structures and degrees of independence from retailers. Some TPIs act as independent consultants for customers. Others may have contractual relationships with retailers but still provide customers with independent advice. Some TPIs have arrangements that mean they act as sales agents for given retailers, helping with a range of functions including water procurement, water efficiency and management, for example.

Although the involvement of TPIs in the retail market may provide many direct benefits to customers and support market development by facilitating higher levels of customer engagement, there are risks that the activities of some TPIs may cause customer harm, especially for smaller non-household customers. Also, TPIs would have a unique role in the market, as they are not market participants under the market codes, nor are they licensed or directly regulated by us, yet their behaviour in the retail market has the potential to directly affect levels of trust and confidence in the sector and in the effective functioning of the market.

## 2.1 Customer protection issues arising from sales and marketing activities

From the evidence available from other sectors, we consider that the main customer protection issues appear to be:

- the omission of relevant information at the point of sale;
- presenting false and/or misleading information (for example, about tariffs, potential savings or contractual terms and discounts);
- aggressive or persistent sales tactics and applying unacceptable pressure to switch retailers or to sign up to a new contract;
- transferring customers to a new contract and/or retailer without their knowledge and/or consent, forms of this behaviour include:
  - ‘passing off’ (that is, where representatives claim to represent a different company);
  - customers being told they are merely signing up for information rather than entering into a new contract; or
  - the forging of customers’ signatures on contracts;
- terms seen or discussed but not understood by customers, either because they are complex or poorly explained, or not set out in plain English; and
- the customer recognising unfavourable terms, but accepting them because of a lack of a better alternative, or being unable successfully to compare offers because of their complexity or differences in the way the information is presented.

Whereas larger customers may have in-house teams and external advisers to ensure their position is protected, we are concerned that these issues could affect smaller non-household customers, especially micro-businesses and some SMEs, which do not have these resources. We also note that accessibility can be an issue – for example, access to broadband services can be an issue for smaller non-household customers, especially in rural areas, which can affect their ability to search for, and sign up to the best deals. In addition, we are concerned that a broker or other TPI may be the first interaction that many non-household customers have with the water retail market, so if customers have a bad experience it could damage levels of trust in the sector after the market opens. A number of stakeholders have also raised this issue with us.

## 2.2 Current regulatory framework

There are currently no licence conditions covering sales and marketing activities, as there has only been very limited retail choice in the water sector up to now. The early water retail market was initially only for the very largest non-household customers in England and Wales (those using more than 50 Ml of water each year), which more recently, has extended to larger customers of appointed companies operating wholly or mainly in England (those using more than 5 Ml of water each year). We were of the view that those customers generally did not need the same levels of protection that may be required for smaller non-household customers.

Wider consumer protection legislation generally focuses on consumers as defined in that legislation, which is usually limited to individuals who are acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession. So many of the protections that would be available under consumer protection legislation to household customers when they participate in markets and are subject to sales and marketing activities, will not apply to eligible non-household customers in the new water market – even those whose behaviour has been shown to be similar to household customers.

Non-household customers are protected in relation to certain sales and marketing activities. For example, certain protections in relation to direct marketing activities exist under The Privacy and Electronic Communications (EC Directive) Regulations 2003. In addition, the Business Protection from Misleading Marketing Regulations (BPMMRs) prohibit misleading advertising and sales activities, and apply both to non-household and household customers. The BPMMRs cover the actions of retailers and TPIs, and among other things, cover misleading actions and omissions. The Competition and Markets Authority (CMA) and Trading Standards have criminal and civil powers to enforce the BPMMRs. Although we understand that some other regulators, including the Gas and Electricity Markets Authority (GEMA), have been granted powers to enforce the BPMMRs, Ofwat does not have the power to enforce these. So the CMA would be the main enforcement body for breaches of the BPMMRs in the water sector.

Following this consultation process, if we do decide to put in place additional regulatory measures to cover sales and marketing activities, we would seek to agree a Memorandum of Understanding (MoU) with the CMA to confirm how we would liaise with each other once the market opens if an issue arises which appears to be covered by both the BPMMRs and our Customer Protection Code of Practice. We have similar arrangements already in place in relation to some of our other powers and duties.

As explained above, we do not licence or directly regulate TPIs. The statutory framework for the retail market means that a person who enters into a contract with a customer for the provision of water supply and wastewater services has to:

- hold a WSSL;
- be an appointed company; or
- otherwise have an arrangement with a WSSL retailer or an appointed company for the delivery of those services.

In relation to wastewater services in particular, it will be a criminal offence for anyone other than a WSSL retailer or an appointed company to use the sewerage system of an appointed company to provide wastewater services. So even if a customer's route to the market is through a TPI, retailers will still be involved in the process and must still make sure that they comply with any rules we decide to put in place which may cover the retailer's behaviour during the process to agree the contract with the customer, and afterwards. We discuss this in more detail below.

Retailers would also have responsibility for the actions of any persons acting as their agent, which could mean they are responsible for the behaviour of some TPIs depending on the relationship between the retailer and TPI.

## 2.3 Lessons from Scotland and other sectors

In the **Scottish** water retail market, there are no specific regulatory provisions covering sales and marketing activities in relation to non-household customers. The Water Industry Commission for Scotland (WICS) recently published an [open letter to stakeholders](#) proposing, among other things, that a Sales and Switching Code of Practice be developed through an industry-led working group. The Sales and Switching Code of Practice could include rules about sales and marketing activity.

In the **energy sector**, there are a wide range of TPIs operating with different business models, and research published by Ofgem in [2015](#) has shown that this can cause some issues for smaller non-household customers, including concerns about:

- mis-representation of TPI roles, their fees, and offers from retailers;
- poor-quality customer service from TPIs and inconsistent advice; and
- a lack of transparency from TPIs, particularly relating to their commission and retailer coverage.

As explained above, GEMA has powers to enforce the provisions of the BPMMRs, which enables it to take action directly against retailers or TPIs that engage in any misleading sales and marketing behaviour within the scope of the BPMMRs. Ofgem has also [consulted](#) on proposals to develop a code of practice for TPIs engaging with non-household customers, underpinned by a licence condition on retailers only to work with those TPIs accredited to the code of practice. And it introduced measures to provide [greater protection for micro-businesses](#) following its [Retail Market Review](#), including taking steps to extend its definition of micro-businesses, so that more small non-household customers benefit from the protections.

In its [preliminary findings](#), the CMA's investigation into the GB energy market suggested that TPIs have the potential to help microbusiness customers engage with energy markets and reach good outcomes. However, they noted that there had been a number of complaints which may have reduced trust in TPIs among micro-businesses and raised concerns about whether the incentives on TPIs encouraged them to get customers the best possible deal. The CMA also raised general concerns about the lack of price transparency concerning the tariffs that are published and available to micro-businesses but noted recent changes in that sector to make it easier for SME customers to get quotes.

## 2.4 Our proposals

We want to make sure that all eligible non-household customers can:

- **access relevant information**, so that they are aware of their choices and can search for alternative deals;
- **understand information**, so they can navigate through the different choices, and understand and compare different terms and conditions; and
- **act on that information** to choose the most suitable deal for them, which could be with their current retailer. Customers also need to be able to act on relevant information about contract termination or renewal.

We have considered these issues, as well as lessons learned from retail markets in other sectors. And we have considered whether regulatory intervention is required at all, but our initial view is that it would leave customers exposed to these issues and potentially jeopardise the effectiveness of the retail market, as well as damage trust and confidence in the market and the sector. It is important that customers are protected from these issues – especially in the early stages of the market when customer awareness and experience of the switching process will be low.

We have also considered whether any regulatory measures in this area should be just targeted at smaller non-household customers or applied to all non-household customers. As explained above, we consider that the issues relating to sales and marketing activities could disproportionately affect smaller non-household customers. They are unlikely to be such an issue for larger non-household customers because of their greater negotiating power in the market. Larger non-household customers are also more likely to carry out a tender process and/or have access to procurement and legal advice, if required.

We have considered whether there would still be a benefit in developing a ‘one size fits all’ approach to cover sales and marketing activities to all non-household customers, to reduce complexity in the market arrangements. This could perhaps reduce burdens on retailers as they would only need to comply with one set of rules for all customers. Applying our strategic risk-based approach, we consider that, on balance, targeting the proposed new protections so that they apply only to smaller non-household customers that need protection would be the most proportionate approach. In our view, this approach would avoid dampening the incentives on those most clearly able to take advantage of the new market to participate actively in it, while protecting those at higher risk, and minimising the additional regulatory burdens on retailers, which is itself important for a well-functioning market.

So our proposals in this area focus on possible protections for smaller non-household customers. This could include micro-businesses, small businesses and other SMEs. In chapter 1, we discussed in more detail how these could be defined, and considered which smaller customers should benefit under any new protections. Our initial view is that the additional protections outlined in this consultation should mainly be targeted at the very smallest non-household customers – micro-businesses – and our proposals are made on this basis. We are very interested in stakeholder views on this.

We propose that the Customer Protection Code of Practice as mentioned in section 1.4 above would include provisions to:

- govern the quality of sales information provided to customers during the sales process, to include information provided verbally or in writing; and
- require retailers to provide customers with details of consumption assumptions used in any illustration of the savings a customer may make by switching to that contract.

**Proposal 2: We propose that the Customer Protection Code of Practice would regulate the quality of information provided during sales and marketing activities, in relation to micro-businesses.**

We are also considering whether to require retailers to provide certain basic information in a standard format, to enable customers to compare like with like and make an informed choice before agreeing a contract. Again, we think this should be required only for micro-businesses, for the reasons discussed above. While it would provide clear benefits to customers and support the development of effective competition, we need to balance the benefits for customers against any additional burdens on retailers or possible impacts on the ability of retailers to innovate in the market. Our initial view is that the benefits for customers and competition would outweigh any impacts on retailers, and that this proposal would not restrict innovation, but we are very interested in stakeholder views on this. We are also interested in stakeholder views on whether this information should be provided to all eligible non-household customers.

**Proposal 3: We propose to use the Customer Protection Code of Practice to require retailers to provide certain basic information in a standard template format, to enable micro-businesses to compare different deals.**

We have considered potential issues relating to TPIs. The proposed new Customer Protection Code of Practice would not apply directly to TPIs, as we do not licence or regulate them. But we are concerned that their behaviour in the retail market has the potential to directly affect levels of trust and confidence in the sector.

We propose to address these issues in several ways. The first is to make sure that retailers take steps to check that small customers understand the terms that they are agreeing to, including price terms, before they agree the contract with that retailer, specifically if the customer has been introduced through a TPI. We discuss this in more detail in chapter 3 below.

The second way we propose to address these issues is to require retailers to take responsibility for any TPIs that act as their agents, especially when dealing with small customers, although we recognise that this will not apply to all TPIs in the market. Retailers would be responsible for the actions of any TPIs that are acting as their agents, and would need to ensure that those TPIs also comply with the relevant provisions of the Customer Protection Code of Practice.

**Proposal 4: Retailers would need to take reasonable steps to make sure that any TPIs acting as agents on their behalf are aware of, and understand, how the provisions of the Customer Protection Code of Practice apply.**

Finally, we propose to consider and discuss further with stakeholders whether there is scope to regulate the behaviour of TPIs through an obligation on retailers to only interact with TPIs that have agreed to a set of standards, either through an accreditation scheme or a voluntary code of practice. This could be something that is developed once the market opens, to address any specific issues that arise. As explained above, Ofgem has been considering similar arrangements in the energy sector, and the CMA is still considering this area as part of its wider energy market investigation, we would look to learn lessons from that experience. We are very interested in stakeholders' views on this area.

### **Consultation questions**

**Q4** Do you agree with our proposals to use the Customer Protection Code of Practice to protect micro-businesses from certain sales and marketing activities?

**Q5** Do you agree with our proposal to require retailers to provide certain basic information in a standard format to allow micro-businesses to compare deals?

**Q6** Do you agree with our proposal to require retailers to make sure that any TPIs acting as agents on their behalf are aware of, and understand, how the provisions of the Customer Protection Code of Practice apply?

**Q7** Do you have any comments on our plan to explore the possibility of requiring retailers to only interact with TPIs that have signed up to a set of standards, either through an accreditation scheme or another voluntary code of practice?

## 3. Contracts and information

### 3.1 Introduction

The expansion of the competitive retail market in April 2017 will result in an increase in the numbers of customers receiving their water and/or wastewater services on a contractual basis. Currently, appointed companies serve most non-household customers on a statutory basis, although some larger customers will have negotiated contracts for water supply. This will change once the market opens as more non-household customers either choose to switch to a WSSL retailer, or are moved to a WSSL retailer if their current appointed company exits the market. All customers of WSSL retailers will be served on a contractual basis (or at least a ‘**deemed contractual**’ basis), so we need to consider whether there are any contractual issues that we may need to address for the retail market, particularly in order to facilitate customers switching between retailers.

The movement of customers onto a contract is important. It gives the customer a route to negotiate bespoke terms and conditions to suit their needs and means that they have a new route to redress through the courts or other private enforcement dispute resolution processes.

It is also important to make sure that customers have the necessary information to make informed choices. Effective competition requires customers to be able to actively engage in the market – either to choose to switch or to negotiate a better deal. As we explained above, they need to:

- **access relevant information**, so that they are aware of their choices and can search for alternative deals;
- **understand information**, so they can navigate through the different choices, and understand and compare different terms and conditions; and
- **act on that information** to choose the most suitable deal for them, which could be with their current retailer. Customers also need to be able to act on relevant information about contract termination or renewal.

We have already discussed sales and marketing activities in chapter 2. We need to consider whether any additional regulatory measures are required in this area to make sure that retailers communicate effectively with their non-household customers before a contract is agreed, and during the course of that contract, especially about contract termination or renewal as well as any change of tariff during the contract.

## 3.2 Contractual and information issues

Most eligible non-household customers are likely to be fully capable of looking after their own interests in relation to contractual matters, and to obtain and understand necessary information about their service and contract. But as with other areas, we are mindful of smaller customers whose behaviour and bargaining position in other competitive retail markets has been shown to be similar to household customers. In relation to those smaller customers, we are considering the following issues.

- Unfair or misleading contractual terms.
- Whether they have the necessary information to be able to act – for example, in relation to contract termination or renewal.
- Whether a cooling off period should be required.
- The role of TPIs.

We would like to see a high level of engagement in the market where even the smallest customers are able to easily understand:

- the terms of their contract;
- how and when they can switch to a different deal; and
- what to do if something goes wrong.

## 3.3 Current regulatory framework

Existing licence conditions do not cover these issues, and most of the current statutory protections are designed to protect consumers (generally, this applies to domestic or household customers) only. Non-household customers are protected to some extent by the Unfair Contract Terms Act.

Although general consumer protection and guidance is not directly relevant, it can still be useful when considering the sorts of issues smaller non-household customers may face, especially around unfair contractual terms.

We understand that various provisions relating to ‘cooling off’ periods in other markets only relate to consumers or domestic customers, and do not apply to non-household customers.

### 3.4 Lessons from Scotland and other sectors

In **Scotland**, there are currently no specific provisions about the fairness of contractual terms or the provision of information to customers, other than the recent [consultation on proposed deemed contracts](#) that would apply in certain situations. There are [provisions](#) allowing retailers to recover a proportion of any discount given to customers on a fixed term contract if the customer terminates the contract before the end of the agreed term, as well as provisions which allow a customer to exit a contract without penalty by giving no more than 28 days' notice.

The WICS [open letter](#) mentioned in chapter 2 above notes that:

“It is imperative that customers are given clear and accurate information at all times”.

WICS proposes the development of a Sales and Switching Code of Practice, which among others things, could include provisions about contracts and information provided to customers.

In the **energy sector**, Ofgem has introduced specific protection for micro-businesses in the non-household retail market. In its recent [report on Retail Energy Markets in 2015](#), Ofgem summarises the steps it has taken to protect micro-businesses in the retail market, including in relation to contractual issues and information provision.

The table below is taken from that report and shows recent Ofgem measures to improve micro-business engagement in the retail market.

Date	Measures introduced
Aug 2013	<ul style="list-style-type: none"> <li>• <b>Fairer treatment for micro-businesses.</b> We introduced enforceable Standards of Conduct that require suppliers to treat micro-business consumers fairly. These standards apply to billing, transfers and contract information.</li> </ul>
Apr 2014	<ul style="list-style-type: none"> <li>• <b>Protecting more businesses</b> (up to further 160,000) by expanding the definition of a micro-business. This includes access to the services of the Ombudsman.</li> <li>• <b>Clearer and simpler processes</b>, requiring suppliers to publish the contract end date and termination date on every bill or statement of account, and banning narrow termination windows.</li> </ul>
May 2015	<ul style="list-style-type: none"> <li>• <b>New protections for micro-businesses on automatic rollovers and contract renewals:</b> the maximum notice period for terminating a micro business contract has been reduced from 90 to 30 days, renewal letters for fixed-term contracts must include current prices, new prices and annual consumption and suppliers must take all reasonable steps to acknowledge termination notice within five working days of receipt.</li> </ul>

Source: Ofgem.

The relevant Standard Licence Conditions (SLCs) protecting micro-businesses are SLC 7A and SLC 7B, which can be found on Ofgem's [website](#). SLC 7A places certain obligations on retailers in relation to micro-businesses, including notifying them about contract terms and other information, and provisions relating to the termination or rollover of the contract. SLC 7B requires retailers to treat micro-businesses fairly, and sets out Standards of Conduct.

The CMA is similarly considering these issues as part of its investigation into the energy market.

In the **telecommunications sector**, in September 2014 Ofcom announced a programme of work designed to enable small businesses to get the best out of communications services in the UK. As part of that programme, Ofcom is reviewing how effective its customer protection rules as set out in [General Conditions](#) are at protecting SMEs from problems like poor service and difficulties when switching provider. This review will assess whether the rules are providing the right level of protection for SMEs. Ofcom also launched a new advice service for business customers and is carrying out further research on the issues that SMEs face.

The General Conditions prevent automatic contract rollovers for 'Small Business Customers' in relation to fixed line or broadband services.

### **3.5 Our proposals**

Having considered the issues and the experience in other sectors, we think that smaller customers probably do require some protection in this area – especially in the early stages of the evolution of the expanded competitive market. We are also considering whether there is any essential information that needs to be provided to all non-household customers to enable them to engage with the market – for example, their Supply Point Identification (SPID) number.

We consider that these are issues that we could address by including rules in the proposed Customer Protection Code of Practice, which would be subject to further consultation in early 2016. We set out our proposed approach to address each of these issues below.

### 3.5.1 Unfair or confusing contractual terms

Non-household customers are often in a much stronger bargaining position than households – so they are well placed to negotiate the contractual terms that suit them best. They are also generally expected to have greater capacity and capability than households to understand and agree contractual terms.

Smaller non-household customers are an exception to this, as their behaviour and bargaining position in other competitive retail markets has been shown to be more closely aligned to that of household customers. For these customers in the new water supply and wastewater services market, we consider that unfair or confusing contractual terms may be an issue. In particular, we want to make sure that customers understand contractual terms that relate to how and when they can switch to a different retailer, and that those terms are fair – for example, in relation to contract renewals. We also want to make sure that smaller non-household customers have no surprises from hidden or confusing terms.

We propose to follow a similar approach to that used in other sectors for smaller non-household customers. And we have considered the various provisions that protect household customers in relation to unfair contract terms, as they are useful to help us identify the areas where smaller non-household customers may be at risk of unfair or confusing contract terms.

We are considering a number of potential issues for micro-businesses in this area, including:

- clarity of customer information including contract terms;
- fixed term, fixed price contracts;
- contract renewals;
- contract termination and termination fees; and
- other possible unfair or misleading terms.

**The contract terms must be set out clearly in writing** in a way that is easy to understand. The terms need to be written in plain language and be easy to read. The main terms must be given prominence in the document, rather than be hidden in the ‘small print’, and the overall document should not be too long.

**Fixed term, fixed price contracts** can be very beneficial to customers, as they provide certainty over the period of the contract and can be used to secure a good deal for customers – a customer may agree to sign a contract for a longer period to obtain a better price. In certain circumstances, they can also be used to provide a useful ‘nudge’ to the customer to make an active choice at the end of the agreed term. There can sometimes be issues if customers are left with no choice but to agree a very lengthy contract, or if customers are unreasonably prevented from switching to a different contract, as both of these issues restrict a customer’s ability to engage in the market. If these issues become widespread, they could impact on the levels of effective competition in the market.

**Contract renewals** and **termination** are important issues. Smaller non-household customers need to understand clearly how the contract could be terminated or renewed, including how and when they need to give notice, and whether any termination fees would be due. We do not consider that fixed term contracts should be rolled over automatically to tie the customer in for another fixed term with charges or fees imposed for terminating the contract, and propose to require written consent from the customer for this. We also consider that any termination fees should be regulated to make sure that they are fair to smaller non-household customers. For example, we may require any termination fees to reflect only the costs incurred up to the date of contract termination in relation to any supply or services provided and any other reasonable costs that the retailer incurs. We do not consider that any additional charges or fees should be imposed on the customer for terminating the contract.

Finally, we are also considering **other possible unfair or misleading terms**. For example, these may include exit fees.

**Proposal 5: We propose to use the Customer Protection Code of Practice to set specific standards of conduct for retailers in relation to their contracts with micro-businesses. These would include:**

- **a requirement for contractual terms to be fair, transparent and in plain language;**
- **a general prohibition against unfair commercial practices, which would include failure to notify the customer of important contractual matters, such as the duration of the contract;**
- **a requirement for retailers to obtain written agreement before rolling over a fixed term, fixed price contract; and**
- **other specific requirements to cover issues such as termination or end of contract notice.**

We also intend to work with stakeholders and customer groups to develop an example of a customer contract that is clear and easy to understand. We do not propose to require retailers to all use the same template, as there will be many examples of good practice in this area. But we think that there would be benefits from sharing such an example as a tool to facilitate discussions about these issues, and to provide guidance for retailers when they prepare their own contracts. We propose to share this example alongside the draft Customer Protection Code of Practice in early 2016.

### **3.5.2 Provision of information to customers**

It is really important to engage customers in the market, and the provision of information to customers by retailers is vital to ensuring high levels of customer engagement, trust and satisfaction. Although we recognise larger non-household customers will generally be well placed to obtain the information they need, and so would not need protection in this area, we want to ensure that smaller customers also have access to clear and timely information. This will mean those customers are better informed and more empowered to make choices in the market. In turn, this will help to drive the development of effective competition.

But equally, we need to avoid creating undue burdens on retailers that could stifle the development of effective competition, and so harm customers in the longer term. So, where possible, we propose to require retailers to provide the necessary information to customers on the customer bill or statement of account, and with other planned communications. This also increases the likelihood of the customer reading the information. Certain information would need to be provided to the customer within a short period of agreeing the contract. Other information is likely to be required towards the end of the contract to notify the customer of any termination process.

The information that would need to be provided to smaller customers includes:

- a written copy of the contract, with details of any cancellation rights (see section 3.5.3 below on cooling off periods);
- the end date of the contract and any requirement for customers to give notice to terminate the contract. For fixed term contracts, we propose that retailers would be required to remind customers on every bill that they are on a fixed term contract, and provide the end date and notice period; and

- applicable complaint procedures, customer service or account manager contact details, and other relevant third party contact details including contact details for CCWater and an alternative dispute resolution (ADR) scheme (we discuss this in more detail in chapter 6).

We discuss possible additional requirements in relation to certain billing information in chapter 5.

**Proposal 6: We propose to include provisions in the Customer Protection Code of Practice to require retailers to provide certain minimum levels of information to micro-businesses.**

We have also considered whether there is any information that needs to be provided to all eligible non-household customers.

To support effective competition in the market, it is important that all eligible non-household customers have the essential information that they need to switch to a different retailer. This includes the customer's SPID number, which is required to begin the switching process. As this is vital information to support the development of the market, we propose to require retailers to provide the relevant SPID number(s) to all customers by including it on the first page of their bill or statement of account. We also propose to require retailers to inform their non-household customers about that customer's ability to switch to a different retailer, at least in the early stages of the market, as this will help to raise customer awareness of the market.

To help the market work effectively in the best interests of customers, we consider that much of this information will need to be provided to customers before the market opens and on a regular basis afterwards. We are currently considering which regulatory tool would be best for this.

**Proposal 7: We propose to require retailers to include the relevant SPID number(s), and a statement informing customers that they can choose their retailer, on the front of all eligible non-household customers' bills or statement of accounts.**

### 3.5.3 Cooling off periods

We have considered whether it is necessary to require retailers to offer a cooling off period after agreeing a contract, before they could begin the switching process. We note that the draft rules set out in the [market codes and the related code subsidiary documents \(CSDs\)](#) do not currently require the retailer to offer a cooling off period. We also note that cooling off periods are not usually provided for non-household customers. They are generally used to protect household customers to allow them to change their mind without penalty within a certain period of agreeing a contract.

We recognise that introducing a cooling off period could prolong the switching process for customers. After the customer has made a decision to switch to a different retailer, the incoming retailer would need to wait until after the end of the cooling off period before initiating the switching process through the market operator. This would extend the switching process by at least seven days, or possibly even longer, depending on the length of cooling off period required. Introducing a cooling off period can also create incentives for retailers and/or TPIs to carry out intense sales and marketing activities during that window.

Benefits from inserting a cooling off period into the process would include an opportunity:

- for any mis-selling issues to be identified and resolved, where the customer has been persuaded to switch based on misleading information (this may be particularly important when the customer has been referred to the retailer through a TPI); and
- for customers to change their mind, either about the contract terms or their choice of retailer.

[Research](#) with non-household customers conducted by CC Water also suggested some support for limited cooling off periods.

Our initial view is that a relatively short cooling off period of seven calendar days for micro-businesses would bring benefits to the retail market, without being too onerous on either customers or the retailers. We are very interested in stakeholders' views on this issue.

We are considering how best to implement such a cooling off period. Although the main purpose of introducing such a cooling off period would be to protect smaller non-household customers, one approach may be to introduce a cooling off period for all non-household customers, but allow customers to opt out if they wish. This approach would perhaps address some of the issues retailers may face in identifying which new customers need to be offered a cooling off period. If customers are allowed to opt out of any cooling off period, we propose that this would need to be confirmed in writing. We are very interested in stakeholders' views on how this could work in practice.

**Proposal 8: We propose to introduce an obligation on retailers to offer micro-businesses a cooling off period of at least seven calendar days.**

### **3.5.4 Contracting with customers referred through a TPI**

As we explained in chapter 2, we know from the experience of other sectors and the water retail market in Scotland that a range of TPIs are likely to be active in the non-household retail market after April 2017. While this is expected to benefit to customers, there are also some risks because TPIs are not licensed or regulated by us. So our role is to make sure that retailers take the appropriate steps to check that customers fully understand the terms of any contract that they are agreeing to with that retailer. This will help to identify any issues where customers have been given misleading or incorrect information in relation to that retailer or the terms it is offering. In particular, we propose to require retailers to do this for smaller non-household customers, as those customers are less likely to have access to the resources and specialist advice that may be available to larger non-household customers.

**Proposal 9: We propose to require retailers to take active steps to confirm that micro-businesses are aware of, and understand, the terms of the proposed contract with that retailer before they agree to it.**

Where the retailer does not have direct contact with the eligible non-household customer, because a TPI is acting on behalf of that customer, we also propose to require retailers to obtain a copy of a letter of authority from the customer confirming that a TPI is acting on its behalf and setting out the scope of the authority of that TPI. We consider that this is an important step for all non-household customers, and would be good practice. So, we propose to require retailers to do this in relation to all non-household customers that use a TPI in this way.

**Proposal 10: We propose to require retailers to obtain a copy of confirmation in writing from the customer that the TPI is acting on behalf of that customer and the extent of that authority, before sharing details about that customer with the TPI.**

### **Consultation questions**

**Q8** Do you agree with our proposal to use the Customer Protection Code of Practice to set specific standards of conduct for retailers in relation to contracts with micro-businesses?

Do you have any comments on the issues that we propose to cover?

**Q9** Do you agree with our proposal to include a requirement in the Customer Protection Code of Practice for retailers to provide certain information to all eligible non-household customers, and additional information to micro-businesses?

**Q10** Do you have any comments on the information that needs to be provided to customers?

**Q11** Do you agree with our proposal to require retailers to offer a cooling off period of at least seven calendar days to micro-businesses? Should a cooling off period be offered to all eligible non-household customers, and if so, should customers be allowed to opt out of any such cooling off period?

**Q12** Do you agree with our proposal to require retailers to take active steps to confirm that micro-businesses are aware of, and understand, the terms of the contract before they agree to it?

**Q13** Do you agree with our proposal to require retailers to obtain a copy of written confirmation that a TPI is acting on behalf of a customer, before sharing any details about that customer with the TPI?

**Q14** Do you have any other comments on our proposals in relation to contracts and information to be provided to customers?

## 4. The switching process

### 4.1 Introduction

An effective switching process is at the heart of a competitive retail market. A clear and effective switching process can increase customer engagement with the market. This provides direct benefits to those customers that switch to a different retailer. It can also strengthen competition, allowing all eligible non-household customers to benefit from:

- greater innovation;
- better service; and/or
- lower prices.

We need to make sure that any issues arising from the switching process are dealt with promptly and efficiently for all eligible non-household customers. This is essential to ensure that customers retain trust and confidence in the sector once the market opens.

Customers may switch to a different retailer in a number of situations in the retail market. A customer may transfer to a different retailer:

- by choice;
- to correct a mistake in a previous transfer or registration;
- as a result of their previous retailer exiting the market; or
- because of a change in that customer's [eligibility](#) status.

Our focus in this consultation is on the first two of these. Our recent consultations on [deemed contracts](#) and [interim supply arrangements](#) discuss what would happen to a customer if their previous retailer exits the market.

### 4.2 Issues that may occur during the switching process

The switching process can be prone to errors. This is because it involves different steps and communications between a number of parties, including:

- customers;
- meter reading agents; and
- the outgoing (losing) and incoming (gaining) retailers.

The sorts of issues that may arise during the process are:

- **erroneous transfers** – when an incoming retailer mistakenly requests to transfer the wrong customer because of an error in the data; and
- **cancellations** – especially when the outgoing retailer objects to the transfer and prevents the customer switching to a different retailer.

Such issues are likely to cause inconvenience and added costs for customers – and affect their level of engagement in the market. Customers need to be confident that the switching process will be quick, easy and error free. If customers lack confidence in the switching process, they will be less keen to switch. If customers do try to switch and experience difficulties or delays, it will undermine trust and confidence in the sector.

### 4.3 Current regulatory framework

The proposed switching process is set out in the [draft market codes](#) (Wholesale–Retail Code, Market Arrangements Code and various Code Subsidiary Documents, or ‘CSDs’).

Following a customer’s request to change to a different retailer, the incoming retailer should lead the administration of the switch and resulting communications with the market operator and the customer. Only retailers would be able to initiate a switch through the market operator. TPIs would not be able to do this.

In certain limited circumstances during the switching process, the outgoing retailer also communicates with the customer. In particular, the outgoing retailer needs to contact the customer to resolve any issues around a request to cancel the switching process, or where the customer has not initiated the switching process.

The [market terms](#) of the Wholesale–Retail Code set out the circumstances in which either the incoming or outgoing retailer may object to the transfer and cancel the switching process during a specified ‘cancellation window’ in the process (section 4.7 of the market terms). They also include a process for the incoming retailer to apply to reverse the transfer of the customer under the erroneous transfer process (section 4.6 of the market terms). The erroneous transfer process is intended to be used to correct a mistake in the SPID number supplied with the initial switching request, and can be used up to three months after the transfer takes place.

Under the process set out in the draft market codes, the switch would take effect between 6 and 20 working days after the market operator has been notified of the switch request. The only exception is if there are significant issues that prevent a switch being executed in that timescale. A customer would be able to select an alternative date beyond that timeframe, which the incoming retailer would manage by simply adjusting the date on which they submit the switch request. The objections process would ‘stop the clock’ on this timescale, but would have a defined escalation route to ensure that any objections are resolved in a timely manner.

#### 4.4 Lessons from Scotland and other sectors

The switching process that is currently set out in the draft market codes is based on the process used in the **Scottish** water retail market, but the erroneous transfer process has been added to reflect lessons learned in Scotland. We understand that initially there were issues in the Scottish retail market arising from some retailers interpreting the rules around the objections process differently, but the issue has been resolved by making the Scottish rules clearer. There have also been some issues where the incoming retailer has had trouble finding the meter, or has been concerned that the outgoing retailer has been reading the wrong meter, as this prevents the incoming retailer from submitting the meter reading.

**Research** carried out during 2013 into the GB **energy sector** shows that for some non-household customers, the current switching arrangements are problematic, as there can be mistakes and delays, leading to a poor customer experience. A particular source of frustration for non-household customers was the objections process, as there was a common perception that many objections were made without a valid reason. Dealing with objections typically involved a high level of customer involvement.

The Department for Business, Innovation and Skills (BIS) recently **consulted** on a set of switching principles. BIS proposed the following six principles to make switching easier for consumers.

- Switching should be free to the consumer unless they are aware of, and have consented to, reasonable restrictions and charges to do so.
- The switching process itself should be quick, at an agreed date.
- The switching process should be led by the organisation with most interest in making the switching process work effectively – the incoming retailer.

- Consumers should have access to their consumption or transaction data. This should be in a format that can be easily reused and they should be able to authorise third parties such as comparison sites to access their data to help them to switch.
- Sites and tools providing comparisons to consumers that receive payments from suppliers should make clear where this affects the presentation of results.
- There should be an effective process for consumers to get redress if anything goes wrong in the switching process.

Our proposals set out in this consultation are consistent with these principles.

## 4.5 Our proposals

We have considered the proposed timeframe for customer switching (6 to 20 working days) that is set out in the draft market codes. Our initial view is that the proposed approach seems reasonable, given that the retail market is for non-household customers only, which are more likely to take a planned approach to switching to a different retailer. We note that customers may request a specified date for the switch to take place, provided that it allows for the steps above to be completed first. So, from the customer's perspective, the switching process should be seamless with the customer informed of the date on which the switch will take place. But we are very interested in stakeholders' views on the proposed process and timeframe – particularly from non-household customers and customer organisations, which have not been so closely involved in producing the draft market codes.

As the preparations for the retail market are already well underway in order to be ready for April 2017, there is limited opportunity to amend the switching process ahead of market opening, but this is an area that could continue to be improved once the market opens to reflect feedback from customers. As set out below, we propose to monitor levels of customer switching once the market opens. As the market develops and matures, we will explore whether there is evidence of customer demand for a shorter switching timeframe.

We also recognise that there may be more issues with:

- errors in customer data in the early stages of the market, which is likely to increase the number of customers that are transferred by mistake; and
- the use of cancellation process, especially by the outgoing retailer.

We discuss each of these in turn below.

#### **4.5.1 Customer switched by mistake (an ‘erroneous transfer’)**

The switching process set out in the draft market codes is based on the incoming retailer providing certain customer data, including the SPID number, when the initial request for the switch is submitted to the market operator. If a mistake is made when providing that data, so that a different customer is switched instead of the customer that actually requested to switch, it could cause significant inconvenience and additional costs. This would affect both the customer who was switched by mistake and the customer that wanted to switch to a different retailer, but has been left with their existing retailer.

The customer switched by mistake would potentially have a contract with one retailer but may be being billed by another under unknown terms and conditions because of the system error. And the customer who wanted to switch but has not been transferred, would be left wondering what was happening, and would likely be billed in accordance with their current terms when they thought they had signed a new contract with the incoming retailer. This could also cause frustration, inconvenience and confusion for both customers, as well as retailers incurring costs to manage and rectify any errors.

Both the cancellation process and the erroneous transfer process included in the [market terms](#) could be used to correct any such mistakes. If the retailer that ends up being the incoming retailer by mistake realises in time, that retailer can cancel the switch during the cancellation window in the switching process. If the retailer that ends up being the incoming retailer by mistake only realises once the customer has already been transferred, then the erroneous transfer process can be used up to three months after the switch.

Under the current process set out in the draft market codes, we note that the outgoing retailer can decide whether to accept the erroneous transfer application or not. We have considered whether this creates a risk of a customer that has been wrongly transferred against their wishes then being left retailer-less, if their outgoing retailer refuses to accept them back. We note that the erroneous transfer would not affect the customer’s existing contract with the outgoing retailer, so we do not consider that this is a concern. But we are interested in stakeholders’ views on this.

Another possible scenario that we need to consider is when a customer is deliberately transferred on the central system by a retailer without the customer's knowledge or consent (as explained in chapter 3 above). Although there is currently no evidence to suggest that this behaviour will be an issue in the new water retail market, we note that, with slight amendments, the proposed process to correct erroneous transfers could be relevant to help to correct any instances of forced transfer arising. Under the present proposals in the market codes for erroneous transfers, only the incoming retailer may use the erroneous transfer process. But in this scenario, the incoming retailer will be the party in the wrong so the process would not be effective as currently drafted. We propose to keep this area under review after the market opens.

We also think that there is a role for us to play to incentivise retailers to ensure they are transferring the right customers. In the energy sector, evidence indicates that [more than 1%](#) of all successful switches are erroneous transfers.

**Proposal 11: We propose to use the Customer Protection Code of Practice to require retailers to take all reasonable steps to ensure they have a valid contract with the customer before they request a switch.**

There is an overlap here with our proposals to introduce a cooling off period, which we discuss in chapter 3. Retailers would have to wait until after the relevant cooling off period before they request a switch.

#### **4.5.2 Using the cancellation process to block a switch**

Following a customer's request to switch to a different retailer there may be a number of reasons why such a request could be cancelled by either the incoming or the outgoing retailer. As explained above, these are set out in the [market terms](#) of the draft Wholesale–Retail Code.

As explained in section 4.5.1, we consider that this cancellations process – if used correctly – could help reduce the number of erroneous transfers. Our main concerns relate to the reasons that would allow an outgoing retailer to cancel the transfer as there is clearly much more of an incentive on the losing retailer to try to prevent the customer from leaving. We know from the experience in other sectors – the energy sector in particular – that the cancellation process can be misused by raising objections for the 'wrong' reasons or to unnecessarily 'block' switches as a way of retaining customers or discouraging switching.

The reasons included in section 4.7 of the market terms for cancelling a switch are:

- the customer has an outstanding debt with current retailer;
- the customer has a live contract still in force with the current retailer; or
- the service(s) subject to the switch request is being served by a self-supply licensee and will remain so.

We are considering whether outgoing retailers should be able to block a transfer because the customer has an outstanding debt with that retailer. This is sometimes referred to as **debt blocking**, and a range of different approaches to this issue can be seen in other sectors. Ofgem has undertaken some interesting [research](#) into the customer switching process in the energy sector. Although we recognise the benefits of the outgoing retailer retaining the contractual relationship with the customer to manage the recovery of any outstanding debt (which indirectly benefits all customers), we are also mindful that by allowing retailers to block a switch on the basis of debt, we may create an incentive on retailers to engineer low levels of debt to stop more profitable customers leaving. And we note that it would still be open to retailers to pursue the customer of the outstanding debt through the courts, and some other regulators have taken the view that debt recovery should be kept separate from the switching process. We are very interested in stakeholders' views on this issue, and could raise code modifications if appropriate.

We also consider that retailers need to actively manage the communication with customers about the use of the cancellation process, to help retain customers' trust in the market and the switching process. If the customer is notified of the cancellation process, the reason for cancellation and a way to resolve the issue, the customer will understand what they need to do to and the steps they need to take.

**Proposal 12: We propose to use the Customer Protection Code of Practice to require an outgoing retailer to inform the affected customer of the reason for any cancellation of the switching process, and advise the customer on the process and timeframe to resolve the issue. We propose that this measure would apply to all eligible non-household customers.**

### **4.5.3 Monitoring the switching process**

To help us understand whether the switching process is effective and working in the best interests of customers, we propose to collect and analyse information on the switching process from market participants and the market operator, when the market opens. In particular, we propose to gather data on use of the erroneous transfer process and the cancellation process by different market participants so that

we can identify if some retailers are using these processes more than others, as that may suggest an issue that we need to investigate further.

#### **4.5.4 Additional issue with the switching process**

MOSL has raised an additional issue about the switching process, which needs to be considered further with stakeholders. The current process, as set out in the draft code, requires the incoming retailer to provide a transfer read to be provided to the market operator for onward notification to the outgoing retailer. On occasions, as specified in the codes, the transfer read may be an estimated read, for example there may be a fault with the meter. To support compliance, the transfer read like all other reads is subject to the performance framework to incentivise prompt compliance.

While the codes require the transfer read to be provided to the outgoing retailer in a prompt timescale, they do not set out explicitly that the same read should be used for the purposes of the closing bill to the customer by the outgoing retailer and the timescales within which that bill should be dispatched.

This potentially creates scope for disagreement and disputes between market participants and customers, as well as a potential gap or duplication if the customer's bills from the outgoing and incoming retailers are not based on the same meter reading or if there is a delay in sending the bill to the customer.

We understand that this issue can be addressed by:

- explicitly requiring outgoing retailers to use the transfer read for their closing bill, within a specified timescale of having received the transfer read; and
- reviewing the performance framework and standards relating to the submission of the transfer read by incoming retailers to the market operator.

The above arrangements are to address the timely billing of customers and so do not affect settlement arrangements between wholesalers and retailers as set out in the draft codes. Customers or retailers may as now dispute any read using the means available to them.

This also overlaps with our proposals about billing, which we discuss in chapter 5 below. We propose to take this forward in discussion with MOSL and the sector. Any proposed changes to the draft market codes would need to be taken through the Interim Code Panel in due course. We note that any proposed changes in this area are likely to be drafting changes rather than system changes. We also plan to monitor the timeliness of the provision of transfer reads by incoming retailers once the market opens as noted above.

### **Consultation questions**

**Q15** Do you have any comments on the proposed timeframe of 6 to 20 working days for the switch to take place, with a retailer and customer able to agree a named day for the switch?

**Q16** Do you agree with our proposal to use the Customer Protection Code of Practice to require retailers to take all reasonable steps to ensure they have a valid contract with the customer before they request a switch?

**Q17** Do you agree with our proposal to require an outgoing retailer to inform the affected customer of the reason for any cancellation of the switching process, and advise the customer on the process and timeframe to resolve the issue?

**Q18** Do you have any comments on whether or not outgoing retailers should be allowed to cancel a switch on the basis that the customer has an outstanding debt?

**Q19** Do you have any comments on our proposal to monitor the use of the switching process, including use of the erroneous transfer and cancellation processes, after the market opens?

## 5. Billing, back-billing and data quality issues

### 5.1 Introduction

It is clearly very important that all customers are billed in a timely and accurate manner, as it is the main interaction that most customers will have with their water supply and/or wastewater services provider. Billing and charging issues form the [majority of complaints](#) made by customers, and any unresolved billing issues may affect levels of trust and confidence in the sector.

At present, the frequency of bills for non-household customers varies, but we understand that most metered and unmetered non-household customers are billed at least once each year, with some metered customers being billed twice a year, or at least having an account adjustment during the year. The billing frequency for larger customers with higher levels of consumption may be shorter – for example, monthly.

### 5.2 Billing issues for the retail market

Making sure that customers receive accurate and timely bills will be especially important for non-household customers when the extended retail market opens, so that customers are well placed to engage with the market. For example, if customers have a good understanding of the basis on which they are currently being billed, they can more easily compare other deals to decide whether they would be better off switching. Also, customers that decide to switch will want to be sure that their bill from the outgoing retailer does not overlap with their bill from the incoming retailer. Equally, they will not want there to be a gap between the two bills that may later result in an unexpected additional invoice for the unbilled period (a back-bill).

Back-bills may also be a particular issue in the early stages of the retail market. Appointed companies are currently reviewing, checking and updating the information they hold on non-household customers as part of the preparations for the retail market, as they are responsible for providing that information to the market operator for it to be added to the central register of eligible non-household customers. But we expect that there may be some issues that only become apparent after the market opens, for example, discovering some non-household customers that are not included on the appointed companies' list of eligible customers. Those customers may not have been billed for some time, so there is a possibility that once they are identified, they may receive a large back-bill for any unbilled consumption/usage. Similarly, we need to make sure that customers receive any refunds that are due to them as a result of overpayment.

So the issues we are considering for the retail market in this area are:

- billing accuracy;
- billing frequency and payment methods;
- information provided to customers about their bills;
- disputed meter readings;
- back-billing and refunds; and
- data quality.

We recognise that there is already an incentive on retailers to bill their non-household customers regularly in a timely manner, as they need to do that in order for customers to pay them, and they will be settling wholesale charges for those customers for the same period. But we are considering whether smaller non-household customers may require additional protection. For smaller customers, there may be less of an incentive for retailers to issue such frequent bills, as the sums involved will generally be a lot smaller, and retailers will be keen to keep their own costs to a minimum.

Also, we consider that inaccurate billing or unexpected back-bills could have a greater impact on smaller non-household customers – both in terms of their cash flow, and because they are less likely to have the resources to pursue a complaint or take legal action. Smaller non-household customers are less likely to have any additional metering equipment installed, so would probably not be able to measure their consumption in the way that some larger customer may be able to do.

### **5.3 Current regulatory framework**

We have tended not to intervene in this area in the current competitive water retail market for larger non-household customers. Retailers and customers are able to negotiate and agree between themselves the frequency of bills and information provided to the customer about their bill.

Retailers are legally entitled to claim debts unless the limitation period for the claim has expired; but equally, they may only recover monies for water supplied or wastewater services provided. There are provisions in legislation allowing customers to dispute the accuracy of meters, which may have a bearing on billing customers.

The [draft Wholesale–Retail Code](#) contains provisions relating to the recovery of wholesale charges, which may have a bearing on the approach that retailers take to their customer billing.

## 5.4 Lessons from Scotland and other sectors

In the **Scottish** water retail market, there are a number of relevant provisions. For customers on a deemed contract, retailers must issue the first invoice to the customer within six weeks. This requirement is to address a number of complaints about delayed billing and unclear information. There are also provisions under the [guidance on disconnections](#) published by WICS. This includes a process for managing debt and offering a payment plan before a customer may be disconnected. If a customer reasonably disputes a bill, the customer may not be disconnected.

In the **energy** and **telecommunications** sectors, a large proportion of customer complaints relate to billing issues. In the energy sector, customers also report [billing problems linked to the switching process](#), including issues with the meter reading used as the basis for the switching process.

In the energy sector, [new rules](#) came into force from April 2014 to make bills clearer and simpler. In addition, Ofgem prescribed that:

- customers must get more informative bills;
- the annual statement should include key facts in an easy-to-understand form, including information about tariffs, termination fees and how to switch; and
- notification of price increases should be in an easy-to-understand format.

## 5.5 Our proposals

### 5.5.1 Billing accuracy

As explained above, accurate bills are very important for customers, especially smaller non-household customers. Inaccurate billing could lead to customers either overpaying or underpaying. Both of these would potentially cause harm to customers – especially if they face an unexpectedly large bill, or an additional bill. Smaller non-household customers are more at risk of falling into debt as a result, with the added issue that under the current [market terms](#) in the [draft Wholesale–Retail Code](#), the retailer would then be able to prevent the customer switching to a different retailer (as explained in chapter 4 above). We discuss the related issue of back-billing in more detail below.

To reduce inaccurate billing for smaller non-household customers, we propose to introduce an obligation on retailers to issue an accurate bill to each micro-business customer at least once a year, based on an actual meter reading rather than an estimate for metered customers. We also propose to require retailers to take a meter reading at least twice a year for those customers. We propose that this could include remote meter readings, as well as physically inspecting and reading the meter in person. This would help to make sure that micro-businesses do not get an unexpectedly large bill, or find themselves in debt through no fault of their own.

**Proposal 13: We propose to use the Customer Protection Code of Practice to require retailers to issue at least one accurate bill each year to micro-business customers and, for metered micro-business customers, to take a meter reading at least twice a year.**

A further issue relating to the timeliness of bills is whether the outgoing retailer issues a final bill promptly after a customer has switched to a different retailer. Although we consider that this is important for all non-household customers, for the reasons explained above, we think that there will be greater incentives on retailers to issue the final bill promptly to larger customers, so that they get paid. But for smaller customers, there would probably be less of an incentive. So for micro-businesses, we propose to require retailers to issue a final bill within six weeks of the transfer. As discussed in chapter 4 above, for all metered non-household customers we propose to require retailers to base the final bill on the transfer read provided by the incoming retailer. Again, we consider that the meter reading could be taken remotely, if the necessary equipment to do this is in place.

**Proposal 14: We propose to use the Customer Protection Code of Practice to require retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract.**

**Proposal 15: We propose to use the Customer Protection Code of Practice to require retailers to base their final bill on the transfer read provided by the incoming retailer.**

We are also considering whether customers should be allowed to take and submit their own meter readings, both as part of the switching process itself as discussed above, and during the course of a contract. This may help to facilitate more accurate billing, but there would be scope for customer error. We are particularly interested in stakeholders' views on this.

### **5.5.2 Billing frequency and payment methods**

As set out above, we propose to require retailers to provide at least one accurate bill to micro-business customers each year. We have also considered whether any further protection would be required for non-household customers in relation to billing frequency or payment methods. We note that our charging rules prescribe that appointed companies' charges schemes must give customers a reasonable choice as to the times and methods of payment of the charges fixed by the scheme. We also consider that billing frequency and payment methods may be subject to competitive pressure encouraging retailers to be flexible in their offerings to meet customers' demands. So we do not consider that any further intervention in this area is required at present. We plan to review this area again after the market opens.

### **5.5.3 Information provided to customers about their bills**

We are currently considering whether any regulatory action is required in this area, for two reasons. We need to make sure that all customers have access to essential billing information so they understand the basis on which they are being billed. This is also important to help facilitate the development of effective competition in the market, as customers need certain information to be able to engage with the market to consider whether there may be a better deal available.

Our initial view is that each bill should include certain basic information, and we plan to hold further discussions with stakeholders about what that information may be, to decide whether it is necessary for us to include any rules in the Customer Protection Code of Practice about billing information. In particular, we consider that each bill should include the following information.

- The customer's SPID(s).
- The tariff and details of how the bill has been calculated.
- Details about the contract, including the end date for any fixed term contract (see chapter 2 above).
- Ways to pay any outstanding debt.

We are very interested in stakeholders' views on this issue.

### 5.5.4 Back-billing and refunds

As explained above, back-billing may be a particular issue in the early stages of the retail market as we expect that, as the market opens, retailers may discover some non-household customers that are not currently included on the appointed companies' list of eligible customers. Those customers may not have been billed for some time, so there is a possibility that once they are identified, they may receive a large back-bill for any unbilled consumption. Currently, appointed companies can require customers to pay up to six years of unpaid water and wastewater charges, so there is no real incentive on companies to identify and regularly bill their customers.

Back-billing can cause a number of problems for non-household customers, and for smaller non-household customers in particular. An unexpected bill may cause cash flow issues for a small business, which in extreme cases, may result in the closure of some businesses through insolvency. If the customer cannot pay the bill immediately, there is no requirement on a retailer to agree a reasonable repayment plan.

We recognise the principle that customers should pay for the water services they consume and/or the wastewater services that they use. But if the customer has not been receiving bills then that is the fault of either the appointed company (acting as the wholesaler and/or retailer), or the WSSL retailer, not the customer. We do not consider that customers should suffer harm as a result of an appointed company or WSSL retailer failing in their obligations to that customer. We consider that appointed companies or WSSL retailers should not be allowed to back-bill their non-household customers unless the retailer can show that the customer has acted inappropriately. We do not consider that a customer has acted inappropriately if the customer has simply failed to notify the company that it has not received a bill or has not requested a bill. Examples of inappropriate behaviour may include dishonest or fraudulent behaviour.

We recognise that the issue may arise at a wholesale, rather than retail, level. We would appreciate views on the extent to which this is expected to be the case. If provisions are required to deal with the wholesale/retail relationship to support our proposals in relation to back-billing, we will consider the appropriate instrument for these provisions and, if required, will propose appropriate changes to the Wholesale–Retail Code.

As noted above, we also recognise that there may be particular issues with data quality in the early stages of the retail market. Limiting the ability of appointed companies and WSSL retailers to back-bill eligible non-household customers once the retail market opens would create an additional incentive on appointed companies to make sure that their customer data is robust and ready for the retail market. So we propose to use the Customer Protection Code of Practice to limit the ability of appointed companies and WSSL retailers to back-bill eligible non-household customers, so that they may only back-bill those customers if they can demonstrate that the customer has behaved inappropriately.

**Proposal 16: We propose to use the Customer Protection Code of Practice to prevent retailers from back-billing eligible non-household customers unless the customer has behaved inappropriately.**

So, for example, if a retailer bills a customer once a year (either because they are required to under our proposed Customer Protection Code of Practice, or by agreement with the customer when the contract is agreed) a bill for one year's charges is acceptable, but no bills should go back further than one year.

**Proposal 17: We propose to use the Customer Protection Code of Practice to require retailers to offer micro-businesses a reasonable payment plan with any back-bill, to allow the customer to pay the bill in a number of instalments.**

We consider that it is very important that customers have access to prompt refunds for any overpayment made because of an inaccurate bill. We have considered whether the Customer Protection Code of Practice should include specific requirements on retailers in relation to refunds. Our initial view is that the best way to protect customers in this area is to make sure they have access to a quick and effective dispute resolution process (see chapter 6 below). So we have not proposed to include any additional measures in the Customer Protection Code of Practice, but we are very interested in stakeholders' views on this issue.

### **5.5.5 Data quality issues**

Accurate and complete customer data is essential to facilitate the development of effective competition in the retail market. Poor data can lead to issues such as:

- customers being switched by mistake;
- delays in customer transfers;
- inaccurate billing; and
- disputes.

We currently expect appointed companies and existing retailers holding a Water Supply Licence (WSL) to maintain full and accurate information on their customer base.

Appointed companies are also currently reviewing, checking and updating the information they hold on non-household customers as part of the preparations for the retail market, as they are responsible for providing that information to the market operator for it to be added to the central register of eligible customers. But we expect that there may be some issues that only become apparent after the market opens, including for example, discovering some non-household customers that are not currently included on the appointed companies' list of eligible customers. Some of these issues may only be identified when a customer tries to switch to a different retailer.

We note that the [draft market codes](#) already include incentives to improve data quality in the form of Market Performance Standard Charges, which are applied when market participants fail to comply with their obligations under the codes. We also note that there is an assurance framework in place ahead of market opening under which appointed companies will have to provide assurance about the quality of their data.

So we do not propose to include any further provisions in the Customer Protection Code of Practice at this time, but we intend to include this area in our monitoring once the market opens. Furthermore, we will continue to monitor the overall position on data quality through the assurance process and may consider further regulatory action as part of the market readiness activities if we consider that the evidence from that process does not suggest that companies are adequately tackling these issues.

### Consultation questions

**Q20** Do you agree with our proposal to require retailers to issue at least one accurate bill each year to micro-business customers and, for metered micro-business customers, to take a meter reading at least twice a year?

**Q21** Do you agree with our proposal to require retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract?

**Q22** Do you agree with our proposal to require retailers to base their final bill on the transfer read provided by the incoming retailer?

**Q23** Do you have any comments on our proposal to do nothing further at this time in relation to billing frequency and payment methods (except for micro-businesses as above)?

**Q24** Do you have any comments about the information that should be provided to customers on their bills?

**Q25** Do you agree with our proposal to use the Customer Protection Code of Practice to prevent retailers from back-billing eligible non-household customers unless the customer has behaved inappropriately?

**Q26** Do you agree with our proposal to require retailers to offer micro-businesses a reasonable payment plan with any back-bill, to allow the customer to pay the bill in a number of instalments?

**Q27** Do you have any comments on our proposal to take no further action in relation to refunds (other than to make sure that customers have access to a quick and effective dispute resolution process)?

**Q28** Do you have any comments on our proposal for no additional regulation on data quality?

## **6. Complaints handling and dispute resolution**

### **6.1 Introduction**

To build and retain customers' trust and confidence in the sector, it is really important that all customers have access to an effective process to resolve any disputes or complaints that may arise. Although the retail market is for non-household customers only, and we recognise that non-household customers are generally better placed than household customers to look after their own interests for the reasons outlined earlier in this consultation, it is still essential that they have a clear and effective route to resolve disputes or complaints. In this chapter, we consider what routes are already available to non-household customers, and whether we may need to consider any further regulatory intervention in this area for the enlarged retail market.

### **6.2 Issues to consider for the retail market**

The main issue we are considering is whether non-household customers have access to an effective and efficient process to resolve any complaints or disputes that may arise in the retail market. Without this, customers may have difficulty resolving problems and are likely to begin to lose trust in the sector.

This issue is also relevant to our role in monitoring the development and effectiveness of the retail market after April 2017. Levels of complaints and disputes in the market, together with details of the issues raised, will be an essential part of the information that we will consider to analyse whether competition is working effectively in the best interests of customers. If it appears that there are some areas where customers need different or greater protection once the expanded market opens then we would need to be able to act quickly to identify and respond to those issues.

### **6.3 Current regulatory framework**

A process already exists for resolving the complaints and disputes of appointed companies. The steps in this process are as follows.

- The customer raises a complaint with the appointed company and follows its internal complaints handling process, including escalation within the appointed company if required.

- If the appointed company's internal complaint handling process does not resolve the matter, the customer may contact CCWater for further advice and support. CCWater may contact the appointed company on the customer's behalf, to try to resolve the matter.
- If the matter remains unresolved after the steps above have been carried out, the customer may be eligible to take their concerns to:
  - the [Water Redress Scheme \(WATRS\)](#), which is a free and independent resolution scheme designed to help customers who remain unhappy after the steps above. WATRS is a cheaper and easier option to pursuing a complaint through the courts or a tribunal. The total award for compensation and/or the cost or value of any action or service is up to £25,000 for non-household customers;
  - to Ofwat, if it falls within our statutory role; or
  - another body, depending on the nature of the complaint.

Customers also retain the right to seek redress through the courts at any point in this process, although the courts will generally not consider a matter that falls within our powers and duties. Larger non-household customers may consider taking action through the courts without proceeding through all the steps above if the value of such a claim makes this worthwhile, but we recognise that it could be more challenging for smaller non-household customers to take legal action.

Our statutory role in relation certain complaints and disputes includes:

- complaints and disputes under certain provisions of the Water Industry Act 1991;
- possible breaches of licence conditions; and
- complaints about anti-competitive behaviour under the Competition Act 1998 – for example, allegations about a company abusing its dominant position in the market.

Remedies can include:

- legally binding undertakings;
- enforcement orders; or
- financial penalties.

More information is available on our [website](#).

## 6.4 Lessons from Scotland and other sectors

In **Scotland**, retailers are required to have an internal complaints handling procedure, including a written policy on complaints. They are also required to have a secondary complaints handling body – they can elect to use either the **Scottish Public Services Ombudsman** (SPSO), which most have done, or WICS fills this role. If a customer is not happy with how their complaint is handled, they may take their complaint to the SPSO or WICS. SPOS/WICS may elect to carry out an investigation to see if the retailer followed their own policies and procedures. This can include consideration of complaints about poor complaint handling by the retailer.

The processes in the **energy** and **telecommunications** sectors are similar to the current complaints handling process in the water sector described above in that customers must first try to resolve the matter with the relevant retailer first, with an ADR scheme available if the retailer is unable to resolve the issue. In both sectors, there is a limited and tightly defined role for the regulator.

In the **energy** sector, the **complaints process** that is relevant for micro-businesses is as follows.

- The customer contacts their energy company directly to try to resolve the issue. Energy companies are **required** to deal proactively with complaints from micro-businesses.
- If this does not resolve the matter, the customer may get support from Citizens Advice, which could provide information and advice.
- The matter may be referred to the Ombudsman Service: Energy (OSE) if the complaint has not been resolved to the customer's satisfaction after eight weeks, or earlier if the company confirms that its own complaints procedures have been exhausted. Any energy company that has household or micro-business customers must join the OSE scheme. The OSE has enforcement powers to require the company to correct the problem and provide appropriate recompense. The OSE can help with complaints from micro-businesses, but not larger non-household customers.

**Ofgem** also has a statutory **role** in relation to certain complaints and disputes between customers and network companies, with a number of enforcement tools and powers, but it does not deal with individual customer complaints against energy companies.

In the **telecommunications** sector, Ofcom does not handle individual consumer complaints. There are two independent dispute resolution schemes: the Communications Ombudsman and the Communications and Internet Services Adjudication Scheme (CISAS). Both schemes have powers to order service providers to fix problems. Ofcom requires that all service providers follow a **code of practice** for dealing with complaints from household and small business customers, and those that provide services to household and small businesses must be members of an ADR scheme.

## 6.5 Our proposals

There is currently a water redress scheme (WATRS), which was launched in April 2015 to resolve disputes between customers and appointed companies. It is an independent adjudication service that customers can use free of charge if their complaint has not been resolved by their appointed company. WATRS is funded by appointed companies, but is run by the Centre for Effective Dispute Resolution and is overseen by an independent panel. At present, WATRS is a voluntary scheme, but all appointed companies – except for the inset appointed companies, that are referred to as new appointments and variations (NAVS) – have signed up to participate in it. This scheme is relatively new, so awareness of the scheme may be low, especially among customers.

When WATRS becomes involved in resolving a dispute it will make a decision based on the documentary evidence that is provided to it, and the appointed company must comply within the specified timeframe given in the decision. The customer does not have to comply with the WATRS decision and can pursue other options through the courts. WATRS aims to make decisions on cases within 20 working days, and cannot fine or take punitive action against an appointed company. Its role is to resolve individual disputes between customers and appointed companies in an impartial manner.

Given the importance of an effective dispute resolution scheme for customers, especially for the non-household retail market, we are considering whether a voluntary model is appropriate. We note that in both the energy and telecommunications sectors, retailers are required to join such a scheme if they have any household or smaller non-household customers. We consider that a similar approach may be required for the non-household retail market in the water sector. This would help to protect smaller non-household customers, as those customers may be less able to seek redress through the courts. We also consider that unresolved disputes would be more likely to have a greater impact on smaller non-household customers.

But we also consider that access to an effective dispute resolution scheme is important for all eligible non-household customers, and will support the development of effective competition in the market. Rather than create increasingly prescriptive rules about every issue that may arise in the market, our preferred approach is to make sure that customers have an effective route to resolve issues if they arise.

So we propose to require all retailers to:

- have an effective complaints handling process for eligible non-household customers; and
- join the WATRS water redress scheme, if they have not already done so.

We have also considered whether to specify the WATRS scheme, or whether we should simply require retailers to be a member of an ADR scheme, which would allow retailers to select which scheme to join, or even to set up one. We think that it would be better for customers if all retailers are members of the same scheme, and as the WATRS scheme has recently been set up for this purpose, it is reasonable to require retailers to join the scheme, if they have not already done so. But we are interested in stakeholders' views on these proposals.

These proposals would apply to all eligible non-household customers.

**Proposal 18: We propose to use the Customer Protection Code of Practice to require all retailers to have an effective complaint handling process in place, and to join the WATRS water redress scheme.**

#### **Consultation questions**

**Q29** Do you agree with our proposal to use the Customer Protection Code of Practice to require all retailers to have an effective complaint handling process in place?

**Q30** Do you agree with our proposal to use the Customer Protection Code of Practice to require all retailers to join the WATRS water redress scheme, if they have not already done so?

## **7. Summary and next steps**

### **7.1 Summary of our proposals**

We consider that a number of new measures would be required to protect customers when the expanded retail market opens in April 2017, as set out in this consultation. We propose that most of these would be targeted at smaller non-household customers – micro-businesses – as experience in other sectors suggests that their behaviour and bargaining position in a competitive retail market is more aligned with that of household customers than with the larger non-household customers that currently have access to a choice of retailers in the water sector.

Correspondingly, and given the clear policy position of the Welsh Government that the retail market will not be expanded in Wales, most of our proposals are relevant to small and micro-business customers in England.

But we do propose some measures that would be applicable to all eligible non-household customers to make sure that the market works in the best interests of customers. We summarise these below.

	Customers who use the supply system of appointed companies wholly or mainly in England			Customers who use the supply system of appointed companies wholly or mainly in Wales
Proposal	Micro-businesses	All SMEs, including small businesses	All eligible non-household customers	All eligible non-household customers (ie, those using more than 50 MI)
<b>Proposal 1:</b> All retailers to comply with a new Customer Protection Code of Practice.	✓	✓	✓	✓
<b>Proposal 2:</b> Regulate the quality of information provided during sales and marketing activities, in relation to micro-businesses.	✓			*see note below
<b>Proposal 3:</b> Retailers to provide certain basic information in a standard template format, to allow micro-businesses to compare different deals.	✓	(✓)	(✓)	*see note below
<b>Proposal 4:</b> Retailers to take reasonable steps to make sure that any TPIs acting as agents on their behalf are aware of the provisions of the Customer Protection Code of Practice.	✓	✓	✓	✓
<b>Proposal 5:</b> Standards of conduct for retailers in relation to their contracts with micro-businesses.	✓			*see note below
<b>Proposal 6:</b> Retailers to provide certain minimum information to micro-businesses	✓			*see note below

	Customers who use the supply system of appointed companies wholly or mainly in England			Customers who use the supply system of appointed companies wholly or mainly in Wales
Proposal	Micro-businesses	All SMEs, including small businesses	All eligible non-household customers	All eligible non-household customers (ie, those using more than 50 MI)
<b>Proposal 7:</b> Retailers to include the relevant SPID number(s), and a statement informing customers that they can choose their retailer, on the front of all eligible non-household customers' bills or statement of accounts.	✓	✓	✓	✓
<b>Proposal 8:</b> Retailers to offer micro-business customers a cooling off period of at least seven calendar days.	✓			*see note below
<b>Proposal 9:</b> Retailers to take active steps to confirm that micro-businesses are aware of, and understand, the terms of the proposed contract before they agree to it.	✓			*see note below
<b>Proposal 10:</b> Retailers to obtain a copy of confirmation in writing from the customer that the TPI is acting on behalf of that customer, before sharing any details about that customer with the TPI.	✓	✓	✓	✓
<b>Proposal 11:</b> Retailers to take all reasonable steps to ensure they have a valid contract with the customer before they request a switch.	✓	✓	✓	✓

	Customers who use the supply system of appointed companies wholly or mainly in England			Customers who use the supply system of appointed companies wholly or mainly in Wales
Proposal	Micro-businesses	All SMEs, including small businesses	All eligible non-household customers	All eligible non-household customers (ie, those using more than 50 MI)
<b>Proposal 12:</b> Outgoing retailers to inform customers of the reason for any cancellation of the switching process, and advise the customer on the process and timeframe to resolve the issue.	✓	✓	✓	✓
<b>Proposal 13:</b> retailers to issue at least one accurate bill each year to micro-business customers and, for metered micro-business customers, to take a meter reading at least twice a year.	✓			*see note below
<b>Proposal 14:</b> retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract.	✓			*see note below
<b>Proposal 15:</b> retailers to base their final bill on the transfer read provided by the incoming retailer	✓	✓	✓	✓
<b>Proposal 16:</b> back-billing only permitted in situations where customer has behaved inappropriately	✓	✓	✓	✓
<b>Proposal 17:</b> require retailers to offer micro-businesses a reasonable payment plan with any back-bill, to allow the customer to pay the bill in a number of instalments.	✓			*see note below
<b>Proposal 18:</b> require retailers have an effective complaint handling process and to join the WATRS water redress scheme.	✓	✓	✓	✓

Please note: As the only eligible customers of appointed companies whose areas are wholly or mainly in Wales are those using more than 50 Ml of water each year, we think it is extremely unlikely that they would be covered by our proposals to protect smaller customers. But this will depend on whether smaller customers are defined according to the size of their organisation, their turnover/balance sheet or by level of consumption (as discussed in chapter 1). It is possible, although unlikely, that there could be some customers using more than 50 Ml of water that are very small organisations in terms of number of individuals and/or turnover.

## **7.2 Next steps**

We welcome responses from stakeholders to our proposals set out in this consultation, especially from customers and customer representatives. Responses to this consultation will help us to refine our proposed approach to customer protection for the non-household retail market.

We also plan to carry out further engagement with a range of stakeholders over the next few months, including a number of workshops and meetings, to discuss the issues set out in this consultation and our proposals. During this process, there may also be an opportunity to liaise with the industry-led working group in Scotland that has been proposed by WICS.

Subject to the outcome of this consultation and our further engagement, we will then consider whether the proposed Customer Protection Code of Practice is a suitable mechanism to address the issues set out here or if they are better pursued through other means, such as changes to other Market Codes. We will consult on the proposed Customer Protection Code of Practice in early 2016. As part of that consultation, we will consider proposals for the process we would follow if we need to modify the Customer Protection Code of Practice in the future.

As explained in chapter 1, a draft licence condition that would require all WSSL retailers to comply with a Customer Protection Code of Practice forms part of the WSSL standard licence conditions that Defra will be consulting on shortly. As we propose that all retailers would be required to comply with the Customer Protection Code of Practice, we intend to consult appointed companies separately about inserting a similar condition into their Instruments of Appointment that would also require them to comply with the proposed Customer Protection Code of Practice. We propose to do this alongside the planned consultation on the Customer Protection Code of Practice in early 2016.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA

Phone: 0121 644 7500  
Fax: 0121 644 7533  
Website: [www.ofwat.gov.uk](http://www.ofwat.gov.uk)  
Email: [mailbox@ofwat.gsi.gov.uk](mailto:mailbox@ofwat.gsi.gov.uk)

Printed on 75% minimum de-inked post-consumer waste paper.  
December 2015

ISBN 978-1-910739-27-3

© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk).

Any enquiries regarding this publication should be sent to us at [mailbox@ofwat.gsi.gov.uk](mailto:mailbox@ofwat.gsi.gov.uk).

