



**Protecting customers in the
non-household retail market
- an Ofwat consultation**

1. Introduction

- 1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing the interests of customers of water and sewerage companies in England and Wales. CCWater has four regional committees in England and a committee for Wales.
- 1.2 We welcome the opportunity to respond to Ofwat's consultation on '*Protecting customers in the non-household retail market*'.

2. Executive Summary

- 2.1 We broadly support Ofwat's proposals to:
 - Introduce a mandatory code of practice that would protect customers by requiring retailers to offer a consistent basic level of protection.
 - Consider extra protections that might be needed for some smaller businesses which, in their consumption levels and likelihood to negotiate, behave like domestic customers.
 - Require retailers that deal with Third Party Intermediaries (TPIs) to seek assurances from those TPIs that they have authorisation to act on behalf of the customer.
 - Explore the requirement for retailers to interact only with TPIs that have signed up to an accreditation scheme.
 - Introduce a maximum switching timeframe. However, we think the proposed 20 working day upper limit is long and should decrease as the market matures.
 - Require that final bills are issued within a specific timeframe. However, we think the proposed six weeks is long and should decrease as the market matures.
 - Require that retailers do not back-bill a customer unless that customer acted inappropriately (e.g. customer has ignored legitimate retailer efforts to collect payment).
 - Require retailers to take all reasonable steps to ensure that customers switching to them meant to do so (i.e. they are not erroneous transfers).
 - Monitor the switching process.
- 2.2 We would seek further clarity, but tend to agree with Ofwat's proposals to:
 - Require retailers to issue one bill a year based on an actual meter reading. It is unclear if customer-provided meter readings would be considered appropriate for this purpose.
 - Introduce a seven day cooling-off period. However, the date from which this would start needs to be clarified (e.g. from when the customer signs the proposed contract).
 - Require retailers to provide some information in a standard format (e.g. like the "key facts" document used in the insurance and financial sectors) to help customers compare retailer deals. However, this could benefit all customers, not just small businesses.
 - Require retailers to have an effective complaint handling procedure and allow customers to access an ADR scheme (e.g. WATRS). However, Ofwat should clarify that it expects that retailers' complaint procedures should reflect CCWater's involvement in offering advice to customers at any stage and formal investigation support once their procedure is exhausted.

2.3 We do not believe that some of Ofwat’s proposals are strong enough in areas:

- We do not think it is acceptable that a retailer could refuse to take back a customer that was transferred erroneously. We would welcome further information about how Ofwat will incentivise retailers to avoid erroneous transfers.
- Ofwat is not proposing to take further action relating to refunds. We propose that Ofwat could specify a timescale or overpayment amount that should automatically trigger a customer refund. Otherwise, we believe that it could be onerous for customers to sort out refunds, particularly where they cross previous retailers.

3. 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?

We agree with Ofwat’s proposal to introduce a mandatory Customer Protection Code of Practice. This will provide customers with a consistent minimum level of protection and could enable general comparisons between retailers in how they adhere to the code of practice.

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

We think that the number of employees at a business and its consumption patterns are practical ways to define smaller customers. It is important for industry parties to be consistent once these definitions are adopted.

In the past, market research companies designing our research have recommended that customers are segmented into groups based on employee numbers as shown in table 1.

Table 1. Proposed non-household customer segmentation by employee size

Business customer segment	No. of employees	No. of businesses in UK¹	% share of businesses (rounded to one decimal)
Sole traders	0	3,965,775	75.6%
Microbusiness	1-9	1,044,385	19.9%
Small	10-49	194,755	3.7%
Medium	50-249	31,475	0.6%
Large	250+	6,745	0.1%

Our market research advice has been that customers within each segment tend to share attitudes and behaviours. Furthermore, these segments are consistent with those used by the Department for Business Innovation & Skills and Ofgem. We would support defining customers this way.

¹ Department for Business Innovation & Skills statistics:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/377934/bpe_2014_statistical_release.pdf

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

Our view is that protections should apply to all small or medium enterprises (SMEs). It could prove impractical for retailers to distinguish between SMEs. In any case, there are relatively few medium sized enterprises. According to the Federation of Small Businesses (FSB)², 99.3% of businesses in the UK are small businesses and 99.9% of businesses are small or medium enterprises.

CCWater believes that in general it will be more difficult for retailers to engage with smaller customers. Our view is supported by research commissioned by Citizens Advice³ that showed that consumption levels and likelihood to negotiate energy contracts, particularly amongst micro-businesses, more closely matched the profile of household customers than large businesses.

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?

We agree that micro-businesses are most at risk from inappropriate sales and marketing activities and therefore should be protected. In our Uncharted Waters: Phase 2 research⁴, we interviewed customer representative groups to ask them what their members expected from a competitive water market. They told us that some smaller companies would want contracts that were simple to understand and easy for non experts to compare.

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?

CCWater agrees with this proposal. It is important that customers are able to make like-for-like comparisons when choosing retailers. We envisage retailers providing customers with a standard template document like “key facts”, which is used in the financial and insurance sectors. Failure to provide this information could lead to some customers feeling they have been misled.

However, we expect that some small businesses would also value the same information as micro-businesses. It may be more straightforward for retailers to get in the practice of providing this standard information to all customers.

² Federation of Small Businesses statistics:
www.fsb.org.uk/media-centre/small-business-statistics

³ Citizens Advice research:
www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20Publications/Research%20into%20how%20small%20businesses%20engage%20with%20essential%20markets.pdf

⁴ CCWater’s Uncharted Waters: Phase 2 research
www.cewater.org.uk/wp-content/uploads/2016/01/FINAL-Uncharted-Waters-Phase-2.pdf

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?

CCWater agrees with this proposal.

In addition to the sales and marketing activities that Ofwat has cited in 2.1, customers should be told by Third Party Intermediaries (TPIs) whether they are acting as advisers to the customer about the whole market or as agents for certain retailers and whether they are receiving a commission.

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?

We support Ofwat's plan to require retailers to only interact with accredited TPIs.

We have spoken to water consultants, and an association that represents TPIs in the energy sector. These parties have acknowledged that they could work to produce a voluntary set of sector-wide standards and sign up to an accreditation scheme. This could provide a redress route for customers against poor performing TPIs.

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?

We agree with the issues that Ofwat proposes 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?

We agree with this proposal.

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

We do not believe it would be onerous for companies to ensure that key information like Supply Point Identification (SPID) and contract end date is included on bills. This should be presented clearly and in plain language to facilitate a smooth switching process.

Customers on deemed contracts should be routinely informed that they are on a deemed contract and how to switch or renegotiate. Customers could be disadvantaged without a suitable mechanism that encourages them to negotiate a lower cost contract. Energy sector prices on deemed contracts are on average 80 per cent higher than negotiated prices⁵.

We believe that smaller enterprises would find it beneficial for negotiating new contracts if their projected annual consumption was provided to them. For example, in the energy sector Ofgem requires that suppliers tell these customers how much energy they use per year⁶. Information about annual water consumption could encourage some smaller non-household customers to make informed choices when they negotiate a contract. Otherwise, there is a risk that some small business customers “stick” to their deemed contracts, as many do in the energy sector.

Customers should be able to find information easily about where to get more information about the market or make complaints.

We understand that Ofwat does not want to stifle good practice by requiring retailers to use the same contract template. However, we believe that an industry-standard template document, like “key facts” in the financial and insurance sectors, could help some customers compare their offerings from different retailers.

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?

We agree with the proposal to allow a cooling off period of at least seven calendar days. In our Uncharted Waters research, some small and medium sized enterprises told us they expected they would be given a cooling off period⁷ after deciding to switch.

In its consultation document, Ofwat proposes that the cooling off period would start “after agreeing a contract”. However, retailers, customers and TPIs may all interpret the start date differently. We suggest the cooling off period should start from the day the customer signs and dates the contract.

A cooling off period should be offered to all customers. We agree that an opt-out of the cooling period would speed up the switching process. However, any opt-out should not be used coercively on customers.

⁵ Ofgem’s website:

www.ofgem.gov.uk/information-consumers/business-consumers/energy-contracts-businesses

⁶ Ofgem’s website:

www.ofgem.gov.uk/information-consumers/business-consumers/energy-contracts-businesses

⁷ CCWater’s Uncharted Waters research:

www.cwater.org.uk/wp-content/uploads/2014/06/Uncharted-Waters-Non-household-customers-expectations-for-competition-in-the-water-industry1.pdf

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?

We agree. This proposal will minimise the risk of mis-selling and customer detriment and provide a check against poor TPI practices.

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?

We agree with this proposal.

TPIs should demonstrate to that they have customer authorisation to deal with the retailer. It may be easier for some customers, retailers and TPIs if a standard authorisation letter was adopted across the industry.

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

Consumer representatives that took part in our Uncharted Waters: Phase 2 research⁸ were asked what their members expected from a competitive water market. They told us that some smaller companies expected contracts to be simple to understand and easy for non experts to compare.

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?

We agree that at market opening there should be an upper limit to the timescale for switching. This period should give retailers enough time to resolve any unforeseen problems and include any cooling off periods.

However, 20 working days is a long time for switch. In 2014, Ofgem required energy suppliers to adopt a 17 calendar day switching timescale and is proposing next day switching by 2018⁹.

As the market matures, we believe that retailers should speed up switching timescales. Switchover times could be a useful performance indicator.

If a specific customer and retailer wanted to agree a longer term switchover date, it makes sense that they are able to do so.

⁸ CCWater's Uncharted Waters: Phase 2 research
www.ccwater.org.uk/wp-content/uploads/2016/01/FINAL-Uncharted-Waters-Phase-2.pdf

⁹ Ofgem's work on next-day switching:
www.ofgem.gov.uk/press-releases/ofgem-leads-radical-shake-energy-switching-process

Q16 Do you agree with our proposal to use the Customer 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?

We agree that retailers should take all reasonable steps to check that customers switching to them actually intended to do so. Erroneous transfers will erode consumer confidence. If a customer's first experience of the market is poor, they could be less confident to switch again. Furthermore, widespread reports of switching problems and customer data errors could undermine the credibility and transparency of the market.

A cooling off period will help reduce the risk of customers transferring against their will. We would welcome further information about how Ofwat will incentivise retailers to avoid erroneous transfers as it states in the consultation document.

We note that Ofwat plans to keep this under review after the market opens, but market codes must be sorted as soon as possible to allow customers to return their original provider quickly when an erroneous transfer is discovered. If an erroneous transfer does occur, we do not think it is acceptable that a retailer could refuse to take back a customer transferred in error.

Even with a valid contract in place, there still may be errors in data collection or transmission. We think reasonable steps need to be taken by retailers, wholesalers and the market operator to ensure there is a high degree of certainty that customer information is correct and errors are corrected as soon as they are discovered. This will reduce the risk of erroneous data in the early stages of the market and customer inconvenience later in the switching process.

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 timeframe to resolve the issue?

We agree with this proposal. If an outgoing retailer has a valid reason for cancelling the switching process, they must communicate this in a clear and timely manner to the customer. The customer must have the opportunity as soon as possible to take steps to resolve the issue that is preventing them from switching.

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?

We think it is reasonable that outgoing retailers should be allowed to cancel a switch if they are legitimately owed a debt.

However, CCWater has dealt with customer complaints where some water companies have claimed customers are in debt though we subsequently discovered that the company sent no bills, sent unclear bills or set payment arrangements too low.

Therefore, circumstances when an outgoing retailer could prevent a customer from switching need to be tightly defined (e.g. customer is in the latter stages of a legitimate debt recovery process and is seeking to switch simply to avoid disconnection and/or delay payment).

Ofwat should define what constitutes an outstanding debt (e.g. amount, time overdue). For example, according to market code definitions, an outstanding customer debt would not apply until 90 calendar days after the retailer invoice date.

Furthermore, if the incoming retailer is prepared to take on a customer debt from the outgoing retailer, there is little benefit in preventing a switch.

In energy, prepayment customers can switch if they are up to £500 in debt.

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

We support this proposal. It is right that Ofwat looks to monitor how effective the switching process is and whether the erroneous transfer and cancellation systems are being used appropriately by retailers.

We expect that some retailers and the market operator will hold data on the number of switches, how long they take, problems occurred and how they were resolved which could all be used as market performance indicators if necessary.

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?

We agree with the proposal that retailers should issue at least one accurate bill each year based on an actual meter reading.

Some micro-businesses, that are more like domestic customers in their consumption and likelihood to engage in the market, may benefit from a meter reading at least twice a year to protect against high bills (e.g. due to leakage). However, it is not clear if Ofwat also intends for microbusinesses to receive a second bill when the second meter reading is taken.

We believe that an actual meter reading should be either a physical/visual reading or a remote reading since the use of automated meter reading technology is likely to be increasingly important for retailers looking to reduce the cost-to-serve of their customer base.

Our view is that customer readings should also be treated as accurate readings, particularly at times of switching. However, we would not expect that where customers provide readings this should absolve the retailer of its responsibility to also take readings at least annually.

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?

We agree with the proposal. The energy sector also uses a six week timescale to issue a final bill. Furthermore, Scottish water retailers issue the *first* invoice to customers on deemed contracts within six weeks (according to Ofwat's consultation document).

However, six weeks is a long time for customers to wait for a final bill. We expect in practice that a final bill would typically be issued sooner than six weeks. As the market matures, we propose that target timescales should drop to four weeks and then two weeks in due course. Measurement of the time until a final bill is another potential performance indicator for the market.

We agree with Ofwat that retailers are likely to bill large customers promptly to maintain cash flows. However, it is unclear why a final bill timescale should not be applied to all customers regardless of their size.

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

We agree in principle with Ofwat's proposal. However, it has the potential to cause some issues if the process for dealing with conflicting reads from the incoming and outgoing retailers is not clearly explained within the Customer Protection Code of Practice or market operator codes.

We would expect Ofwat to clarify how the outgoing retailer should bill the customer if there is a discrepancy between its final reading and the transfer reading provided by the incoming retailer. This is particularly important if the outgoing retailer is to send a final bill within six weeks.

We accept that an estimate may need to be used at the time of customer transfer in some cases. However, retailers should take all reasonable efforts to obtain an actual read. Estimates used at times of transfer could be a major source of complaint for some customers.

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?)

The existing requirements for a reasonable choice of payment frequencies and methods in appointed companies' charges schemes should be sufficient to ensure that there is not a need for further regulation.

If any customer was unhappy with the billing and payment options they had with their current retailer, in a functioning competitive market, we would expect they could agree more favourable terms with an alternative supplier.

However, it is reasonable for Ofwat to keep this under review in case the market develops so that certain customer groups find themselves with limited choice of supplier and contract terms that might necessitate additional protection.

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

We agree with the information Ofwat proposes should be provided to customers.

In addition, companies should be required to provide general details about the market and customers' right to switch supplier alongside information about the customer's current contract details. This would raise awareness amongst customers who have yet to engage with the market.

Attention should be given to how appointed water companies and retailers explain switching eligibility to customers on the England and Wales border. For example, some of these customers may receive water service from a company mainly in Wales (and therefore cannot switch their water retailer) but receive their sewerage service from a company mainly in England (therefore can switch their sewerage retailer).

If water companies provided a brief explanation on the bill of where to get further market information, this could help to prevent customer confusion and complaints.

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?

We agree with the proposal to prevent back-billing. As is noted in the consultation document, allowing back-billing up to the statutory limit removes the incentive on retailers to ensure their billing systems are operating efficiently. It is appropriate for the retailer to bear the risk if it has failed to bill its customers in a timely and accurate manner.

Accurate data will be very important in ensuring that interactions with customers in the market run smoothly. Where a retailer purchases a customer book from an appointed company that chooses to exit the market, as part of its due diligence processes it must take responsibility for the accuracy of the data. The retailer should not be permitted to back-bill the customers concerned if it later discovers that the data was inaccurate.

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?

We agree with this proposal in circumstances where back-billing is permitted. However, we would expect a retailer to consider a reasonable payment plan for all its customers.

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

Ofwat's position to take no further action relating to refunds seems at odds with its statement "it is very important that customers have access to prompt refunds for any overpayments made because of an inaccurate bill" in Section 5.5.4 of its consultation document.

It could be onerous for some customers to sort out refunds particularly where they cross several previous retailers. We propose that Ofwat could specify a timescale or overpayment amount that should automatically trigger a customer refund. For instance, it may be appropriate for an outgoing retailer to automatically pay a refund before a customer transfers to a new retailer.

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

The market codes provide a framework for ensuring that trading parties are penalised through the application of Market Performance Standard Charges where data errors are committed. There is also a system for monitoring those trading parties that are considered to be making a disproportionate number of errors and the ability for the market operator to apply an Initial Performance Rectification Plan.

Any action by Ofwat needs to avoid duplicating safeguards that have already been put in place. The market operator has a system for monitoring the operation of the market once it opens. However, there may be a need for action if it becomes clear from companies' letters of assurance that the data cleansing exercise they are undertaking before market opening will still result in significant potential for data errors in the market. Ofwat needs to ensure that companies are making every effort to ensure the integrity of their data.

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?

We agree that all retailers should have a complaint handling process that is easy for customers to understand and navigate. Complaint handling in the retail market for water should not be inferior to the system that exists currently.

We propose that retailers model their complaint procedures on those of the appointed companies:

- No more than two company stages (first stage and second stage internal review) with a more senior review at stage two.
- The ability for CCWater to advise retailers on preferred solutions when referring complaints that have not exhausted their internal procedures.
- Mandatory referral of customers to CCWater if the matter remains unresolved where CCWater can formally investigate if required.
- Referral to a binding Alternative Dispute Resolution (ADR) scheme if the outcome is in dispute following CCWater's involvement.

An effective complaints resolution process will be an important part of protecting micro-businesses. CCWater intends to continue to provide advice and support for customers in the new retail market. We will work with all new retailers to ensure they have effective complaint handling procedures and their customers are aware of the option of referring issues to CCWater if they cannot agree a resolution with their retailers.

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?

Retailers will be in a contractual arrangement with their customers. Therefore, in accordance with the European Directive¹⁰ on Alternative Dispute Resolution (ADR) for consumers, retailers will need to be members of an appropriate ADR scheme.

Using the WATRS scheme is a reasonable proposal as it will have been in operation for two years by the time the market opens. However, WATRS membership is currently voluntary, and it is not handling contractual disputes. It may therefore need to adjust its scope and rules to meet the requirements of UK legislation and the European Directive. Therefore, Ofwat would have to consider the implications of making WATRS the mandatory ADR scheme in the retail market.

4. Enquiries

4.1 If you have any questions about CCWater's response to this consultation, please contact:

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¹⁰ European Directive:
eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF