

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

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 fully support the concept of creating an appropriate, industry-lead code of practice for sales and marketing activity, and would be pleased to be involved in the code of practice working groups, to enable customer switching, and ensure high standards are met across the industry, whilst promoting customer choice and allowing competition to thrive.

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

We feel that the upcoming section 33 of the Small Business Enterprise and Employment Act 2015 will provide the most useful definition. Employee number and turnover are the most relevant factors, with employee numbers foremost.

One person can generate a disproportionately high turnover dependent on business type (for example online start-ups) but have very little resource available for dealing with utilities as the business is dependent on them alone.

We do not consider consumption to be relevant to the definition; a very large company could have minimal consumption of water due to their business type. For example a large national chain of clothing stores would have significant buying power, but may have minimal consumption of water due to their sites only having staff toilets, etc.

Consumption may already be included in the market data, but its availability doesn't make it relevant to determining customer type. This does raise the question, however, of how retailers are expected to determine customer type; we would suggest that this field is added into the market data and is based primarily on number of employees.

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

This will vary for each proposal, we will comment on each point individually. We would highlight that each additional requirement for a smaller customer of any type, increases their cost to serve, and reduces the value that competition can bring to these customers.

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?

Yes

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?

Yes, we agree in principle.

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?

Yes, we agree in principle, although we believe further clarity is required on how the understanding of the agents is to be assessed. Furthermore, we believe that this requirement should be industry-standard and not just applicable to small businesses.

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?

A voluntary code of practice is the most practical and preferable option, and should be sufficient.

An accreditation scheme will be costly and time-consuming to administer, and there is a risk that it could be overly onerous and could inhibit the development of competition.

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?

Yes.

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?

Yes.

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

It is absolutely crucial that the SPID is communicated to customers on every bill; this is the central unique identifier which is used to access further information. If this information is not readily available, there is an increased risk of erroneous transfers or inaccurate invoicing.

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?

Yes, and we agree that a cooling off period should be extended to all customers. We agree that waiving the cooling off period is necessary, as some customers will require a specific switching date. We would disagree that written permission is needed, as if speed is the reason why the cooling off period is being waived, this is counter-intuitive; provided that robust processes are in place, and an audit trail is maintained by providers, written documentation shouldn't be required.

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?

Yes.

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?

Whilst we agree in principle that written permission is needed for a third party intermediary to take decisions for a party, with no contact we are unclear how this scenario would ever happen. Could you please clarify if you are suggesting this is when:

- A retailer has a customer and is approached by a TPI to give customer details to the TPI, potentially for attempting to sell to a customer - we would agree an LOA is needed here;
- A retailer has a customer and receives a transfer order away in conjunction with communication from a TPI suggesting the customer has terminated the contract and potentially accepts any fees or penalties with that - we would insist on direct contact with a customer at this point;
- A retailer is approached by a TPI to transfer a new customer with whom they have never spoken or written to: confirmation of details sent to the customer directly from the retailer, and an attempt at verbal communication would be preferable to an LOA in this scenario; or
- A retailer has a customer that they have never spoken to (potentially a gap site or interim supply customer) and are approached by a TPI to set up a direct debit or enter a fixed term contract - an LOA would be needed here, along with direct attempts at communication with the customer.

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

No

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?

Yes, we agree, and would suggest that the date the switch will take place on is always confirmed, in writing, to the customer.

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?

Yes.

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?

Yes, however, a reason code or some other standardised response is not enough; there must be sufficient detail in order that customers are fully informed of not only why the switching process has been cancelled, but what they need to do next in order that the issues may be resolved and the order replaced. For example if debt is the reason for the cancellation, the notice to the customer should include the amount, how long overdue the debt is (to prevent billing in arrears blocking, or other retention tactics), and what action is required to resolve the issue – e.g. payment methods and the bank details to do so, and the options for payment plans.

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?

Yes, retailers absolutely must be able to cancel a switch where a customer has outstanding debt; however 'debt' needs to be clearly defined. For example, we could consider that debt refers to an outstanding amount that remains unpaid after an agreed payment date has been missed by the customer, not an amount due to the retailer because the charges are billed in arrears and have not yet been invoiced or are not yet due to be paid.

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?

We fully encourage and support this, and would be very interested to see any conclusions that Ofwat are able to draw from this monitoring.

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?

Yes, once a year should be an absolute minimum, and we would encourage more frequent billing.

We would question why only micro-businesses are included in this proposal; regular and accurate invoicing benefits businesses of any size. To limit such requirements to the smallest customers significantly increases the cost to serve these customers, and reduces the benefit of competition to them, as they are less desirable and have increased margin squeeze.

If minimum standards of invoicing were applied to all customers, this cost would be spread across the customer base, and the average cost would decrease. It is also likely that market data can only be improved by adopting this practice industry-wide.

Whatever Ofwat deem to be the minimum requirement should be extended to all.

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

Yes.

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

Yes. The settlement will be based on this read, so it will provide consistency to the cut-off point a customer can expect. It would be unfair to one or more parties not to follow this rule, as one party would have to bear the difference between the wholesale settlement and what they are able to bill on to the customer.

We would like confirmation on how Ofwat envisages wholesaler bills to be sent and collected from customers after the market opens. If a wholesaler was to choose to pass the bill on to their associated retailer we would accept this, however we do not feel that new retailers not associated to a wholesaler should have to pass on wholesalers bills after exit, and face the potential damage to the customer relationship that can be caused by back-billing. We are

particularly concerned that undertaker charges dating back up to six years may be passed on.

We feel strongly that wholesaler error, in addition to retailer error, should not be passed on and move across the new market, otherwise there is no incentive for the bills to be correct at the point of market opening. It would be extremely unfair for a new retailer to have to absorb the burden of billing customers for a wholesaler who has provided a poor service in the past. There must be a definitive and consistent cut-off point for the retailer in terms of responsibility for wholesale charges and onward customer invoicing.

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)?

Yes, the option for customers to provide their own meter reads is extremely important; a customer should never actively provide a meter read and have it rejected because it is not taken by a meter reader. Providing meter reads and having bills and estimates adjusted is an important method of monitoring for customers who are concerned over consumption and bills becoming unmanageable. It should be a requirement to accept a customer-provided meter read and adjust estimates from that, if there is no suspicion that the meter read has been fraudulently provided.

There is a fine balance between protecting customers, and how much regulation places an additional burden on the smallest customers. There shouldn't be an additional burden on the smallest of customers, as only providing protections that require additional cost to these customers puts them at a commercial disadvantage.

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

We agree with Ofwat's suggestions.

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?

Yes, otherwise this could be used as an exceptionally unfair retention technique. We would like clarification on how back-billing is expected to be executed.

As noted in our response to Q22 above, we are concerned on how legitimate wholesale charges that should be back-billed will be managed, and which market party should deal with the customer, their queries and any potential complaints.

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 believe a payment plan should only be offered for back-bills where the customer is not at fault. Where a back bill is necessary due to fraudulent usage, the retailer should have the option to recover in full, through courts if necessary.

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)?

We feel that there should be a defined process to ensure prompt returns where there is no dispute, merely a credit balance due to the customer, as this could be a major barrier to the switching process.

We will continue to monitor this situation, however, we feel that it is likely that there will be a need for a stronger response from Ofwat. We are concerned that pre-payment contracts and the delay in refund return will cause cashflow issues that may cause a customer to be forced not to switch.

It has also been our experience in Scotland that a customer's lack of confidence in their retailer (which has caused them to want to switch in the first place) being capable enough, or trustworthy enough to return the refund, causes them to choose not to switch; even though the customer is unhappy, they perceive the switch to be damaging to their cashflow position and to require excessive effort and are therefore discouraged from switching.

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

An accurate dataset is the best outcome for a fully functioning market; Ofwat should incentivise incumbents to produce the most accurate data possible. Appropriate measures need to be put in place to encourage data improvement until the data is as good as can be reasonably expected.

While we understand that the dataset will not be 100% accurate from day one, there is still over a year until the opening of the market, and sufficient time to address known data issues to reduce inaccuracies as far as possible. Without good data there can be no effective competition, it can only be a hindrance to the market functioning effectively.

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?

Yes.

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?

Yes. We acknowledge that RWD have responded to this question and have raised some very interesting points. We would ask that Ofwat be mindful of the costs involved if participation is a requirement; the costs for a new entrant should be different to those of an established retailer with a large inherited customer base. There should be a scale of charges to avoid barriers to entry.

We would like further clarification on the benefits of a two stage process for the customer, as we would interpret this as an unnecessary delay in resolution. From what we understand to date, under the WATRS scheme, a complaint is referred to CC Water in the first instance; we would be interested to learn the average timescales for a complaint to be resolved.