

# United Utilities response to the Ofwat consultation: Protecting customers in the non-household retail market



## Introduction

United Utilities welcomes the opportunity to comment on the Ofwat consultation “Protecting customers in the non-household retail market.” We support the creation of a Customer Protection Code of Practice and believe that delivery of this should be led by industry participants. We recognise that putting in place additional regulations to protect customers in the new retail market is necessary but we also believe it is important to avoid additional regulation that is unnecessary as this could act to stifle the competitive market.

A good example of this is in the identification of micro and SME businesses where there are two alternative options available. One option would be to require companies to undertake significant analysis, purchase and verify additional information and add to administration costs, reducing competitive intensity in the relevant segment. The alternative is that water usage and/or number of supply points could be used as a proxy with a transparent threshold. Care needs to be taken wherever possible to minimise any additional work for participants to undertake.

## 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 do not support the proposal for the introduction of a mandatory Customer Protection Code of Practice if it is likely to have a significant impact on the regulatory burden for market participants. We do support the development of a Customer Protection Code of Practice in principle. We propose that market participants and other stakeholders (including regulators and customer representatives) establish a working group to develop an appropriate voluntary code of practice. This would have the benefit of having retailers take responsibility for ensuring good conduct and it would also draw on the considerable experience that now exists within retailers who have experience in the gas, electricity and other water markets. We would be keen to participate in any working group to develop a Customer Protection Code of Practice.

We note that Ofwat’s proposal does not align with WICS current thinking: in their recent open letter, WICS states that:

“One option would, of course, be for the Commission to take a lead in developing such a code and require compliance with it through licence conditions. However, the Commission would much prefer to see the retailers take responsibility and for them to take the lead in developing an effective code of practice. This would be good for customers, good for the market and good for retailers.”

This divergence in approach has the potential to lead to significant differences between the English and Scottish markets.

We would also question whether the introduction of a mandatory code of practice will be effective. There are already a number of mandatory codes and new legal requirements which create the framework for trading in the new competitive market. Adding a further set has the potential to be counterproductive, leading to retailers focusing on rules based compliance at the expense of innovation and to the detriment of the customer experience. It also gives rise to the possibility of tension and inconsistencies between the various new requirements.

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It is important that any code of practice put in place achieves the correct balance between protecting customers' interests and avoiding the creation of unnecessary barriers to switching or burdensome regulation which discourages participation in the market.

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

It is important that the information required to identify smaller customers is easy to access and does not add unnecessary cost to retailers. Using the number of employees and/or turnover or balance sheet would add a level of complexity and cost for retailers. It would seem more sensible to use data already present in market operator system and we would propose a combination of:

- The consumption of the site in question
- The number of supply points for which they are the customer

So a customer with both low consumption and a low number of sites would be classified as a small customer.

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

We would agree that any additional protection be limited to micro-businesses only. This would be dependent on the definition chosen to represent the scale of business being clear and straightforward to implement.

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 in principle that there should be protections for smaller businesses. These protections should be defined within a code of practice developed by market participants.

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?

We agree that basic information should be provided in a standard format to allow micro-businesses to compare deals. The details of this information could be defined within a code of practice developed by market participants, but as a principle we suggest it should be based on the information held in the market data set.

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?

In situations where a TPI is acting as a sole agent and is appointed by the retailer, this would seem to be an appropriate requirement. However, we note that based on the experience of United Utilities Scotland, most of its interactions with TPIs occur not when the TPI has been selected by UU Scotland but rather when the TPI has been appointed by, and is representing, the customer. In these situations, while the

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retailer could encourage awareness of the code of practice, it would not seem appropriate for the retailer to have an obligation in respect of the TPIs awareness and understanding of the code of practice.

We also note that there appears to be some ambiguity within the consultation which would benefit from clarification. On page 23 it says both “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”, whilst the proposal states that “Retailers would need to take reasonable steps to make sure that any TPIs acting on their behalf are aware of, and understand, how the provisions of the Customer Protection Code of Practice apply”. We consider that a “reasonable steps” basis is more appropriate; however any obligation on companies will need to be carefully worded, particularly in relation to the nature of the relationship retailers have with TPIs. We would urge caution in not overburdening TPIs as they have played a valuable role in developing the retail market in Scotland.

**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?**

Accreditation for TPIs could provide a number of benefits to customers, particularly in terms of protecting them from certain sales and marketing practices.

However, obligations on retailers would not seem to be the most appropriate means of regulating TPIs. As noted above, the experience of United Utilities Scotland is that most interactions with TPIs occur when they have been appointed by the customer. It would seem unworkable to restrict retailers from dealing with TPIs who had not been accredited or who had not signed up to a voluntary code of practice, as they may have authority from the customer to act as their representative. Moreover, if retailers could not deal with TPIs who did not sign up, then a voluntary code of practice would in effect be mandatory.

**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 that clarity of information for the customer is important to ensure a well-functioning market which is seen as fair by customers. However in line with our initial comments above we see the potential for the prescriptive requirements and standards to become burdensome. In line with moves away from ex ante regulation which can be too prescriptive, interventionist, and add an administrative burden, we support the requirements or standards set out within a voluntary customer code of practice containing the necessary provisions only. The provisions must be proportionate and targeted, allowing the market to operate putting customer choice at the heart. By way of illustration, banning contract roll-over without written agreement could be to the detriment of customers who end up on a deemed contract rate.

**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 support this being in a code of practice, but believe that the industry should lead development of the code of practice.

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

We would support the requirement to put SPIDs on bills, and the inclusion of a statement that the customer has a right to switch retailers. There is no reason why this could not be done indefinitely. Placing the switching statement on 2016-17 bills, as appointed businesses are required to do, gives a level of communication ahead of market opening.

In respect of micro-businesses, we agree with the requirements in proposal 6.

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 note that the market in Scotland has generally operated well without the need for a cooling off period; as a result, we are unconvinced that such a requirement is needed in the English market.

A cooling off period would prolong customer switching by 7 days and increase systems complexity, thereby adding costs to active retailers and discouraging competition. It also does not appear to be supported by Ofwat's research which suggests that NHH customers value ease and speed of switching (page 12 of the consultation). As noted in the consultation, cooling off periods are not usually provided for non-household customers, and there does not seem to be a compelling rationale for their use in this instance. A written opt-out would simply add further complexity to the process, and a cooling off period for all non-household customers whatever their size seems to be especially unusual.

A better way to avoid miss-selling is to have a well-developed code of conduct developed by the industry, combined with targeted investigations by Ofwat where a retailer is suspected to be demonstrating a pattern of poor/sharp practice.

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 do not agree with the proposal. It appears to be intended to address a risk arising because TPIs are not licenced or regulated by Ofwat. Creating additional obligations on retailers seems an inappropriate way to address the conduct of TPIs, given that the retailer typically does not appoint them and they are acting on behalf of the customer. A better approach would be for Ofwat to address the issue of TPI conduct directly, for example by enforcement of the Business Protection from Misleading Marketing Regulations (as outlined on page 19 of the consultation).

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. Indeed, we already require this as part of our current internal processes. Agreement does need to be reached over what is included within the letter of authority including end date, services provided etc.

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

The market as a whole needs to be designed and built to enable the benefits of retail competition to be realised. There is the potential that these benefits will not be realised if the effort of creating and operating within the new market is greater than the positive impact competition can have on efficiency, innovation and customer satisfaction. The requirements on contracts and information being provided to the customer should be proportionate and targeted, allowing the market to operate putting customer choice at the heart.

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?

The timeframe for customer switching seems appropriate, we therefore support this. However the market codes at present do not allow for customer reads to be used as transfer reads. Actual reads, be it visual or AMR, are currently permitted, as is estimation. We would therefore suggest that the switching process may be improved by the allowance of customer reads on transfer, in line with the proposals documented on page 48 of the consultation.

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 we agree.

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 we agree, this should form part of the standard switching cancellation process.

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 support this proposal and believe that such measures are important in order to ensure that there is no scope for serial switchers to 'play the system' to avoid ever paying for the services they consume; were this to be allowed then this would be to the detriment of other customers in the market. The ability to prevent a customer switching away from an existing debt should make it slightly easier to pursue payment. The experience of United Utilities in Scotland is that objection to transfer on the basis of outstanding debt has not been misused by the outgoing retailer (although it is generally agreed that the requirements for effective communication to the customer require improvement and standardisation.) As part of the Customer Protection Code of Practice, retailers should be required not to misuse the transfer objection.

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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 support this proposal. Good quality data about the functioning of the market can support proportionate, targeted regulation and inform horizon-scanning exercises to identify areas where markets can be made to work better.

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 do not agree that these requirements should be mandatory; it is for individual retailers and customers to agree upon the frequency of billing and meter reading. While these prescriptive requirements are well-intentioned, they may stifle innovation, negatively impacting the market and therefore customers. We would also note that they may be at odds with the service level incumbent retailers currently offer certain customers, upon which they based their price control submissions.

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 support this proposal.

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

As a principle, customers should not be charged twice for the same usage, so we agree that the outgoing retailers end reading should align with the incoming retailers start reading. However, we believe that the approach must also be consistent with the allocation of wholesale volumetric charges by settlements. Using the transfer read would not align with settlements unless the transfer read is taken on the registration start date (RSD). This effect could be significant for larger customers. Therefore, we propose that above a de minimis level, where the transfer read is not taken on the RSD, both outgoing and incoming retailers should use the same methodology that the central system uses to calculate daily advances to arrive at the same end/start reading.

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)?

We agree, this is for individual retailers and customers to agree upon the frequency of billing and meter reading. However, we note that the consultation on deemed contracts does indeed specify requirements in this area, and we would suggest that these are withdrawn, to ensure that there is a level playing field between all retailers whether they are part of an appointed business, associated licensees or new entrants.

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

We would propose that a working group be established to define the information requirements and delivery mechanism. This should aim to minimise the cost of this activity.

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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 recognise that back billing can lead to problems for non-household customers, and in particular for smaller customers. We do however have some concerns as to how the proposal could be effectively operated. If the bar for demonstrating inappropriate behaviour is set too high then opportunistic or tactical behaviour from a minority of customers may advantage them and thereby lead to higher charges for other customers. Many of the incidents where back billing would have occurred relate to wholesale data quality, therefore robust processes and rules need to be in place to ensure fairness between wholesaler and retailer.

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 do not object to this proposal.

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 support this proposal and welcome efforts to minimise the regulatory burden.

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

We support Ofwat's suggested approach to monitor this issue rather than introduce further measures prior to market opening.

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 and note that this is similar to what is required from the WICS in Scotland

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?

In principle, we support the use of an arbitration scheme, but believe further work is required to ensure that the operational code SLAs are consistent with the provisions of any scheme and do not result in retailers being penalised based on the time it takes wholesalers to respond to requests for information or for work to be carried out. We would hope that the use of arbitration schemes be minimal given the contractual nature of the relationship and detailed market codes.