March 2016

Trust in water

Protecting customers in the non-household retail market – a consultation on final proposals and a draft customer protection code of practice

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About this document

The Water Act 2014 will allow all non-household customers who use the supply system of undertakers whose area is wholly or mainly in England to choose their supplier of water and wastewater retail services from April 2017. This will allow approximately 1.2 million eligible businesses and other non-household customers to be able to shop around for their water retailer.

The new market 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 non-household customers are appropriately protected in the retail market.

In line with our statutory duties, we must ensure that those new market arrangements provide real choice for customers and that through their ability to shop around they can get the price and service package they want from their supplier. The best protection for customers will be an effective set of market arrangements that drive high levels of competition among suppliers. However, the experience of retail or 'supply' markets in other utilities suggests that some additional regulatory protections may be needed for some customers in certain circumstances.

This consultation sets out our final proposals for a Customer Protection Code of Practice ('the code of practice') and includes a draft of that code, which is published alongside this document.

Our final proposals and the draft code of practice have been informed by the responses and other feedback we received to 'Protecting customers in the non-household retail market – a consultation', which we published in December 2015. They were also informed by feedback we received from a number of stakeholder meetings and workshops. We summarise that feedback in the consultation alongside our final proposals.

The consultation also sets out how the code of practice is going to be implemented and the associated change management arrangements governing how the code could be amended in future. We expect the code to be given legal force through a licence obligation on both Water Supply and Sewerage Licensees (WSSLs) and appointed companies.

Finally, it sets out our next steps for this work and a small range of outstanding areas where we propose to take forward further work following or ahead of finalising the code.

Contents

Responding to this consultation

We welcome your responses to this consultation by **15 April 2016**. Please email your responses to customerprotection@ofwat.gsi.gov.uk, with the subject 'Customer protection code of practice consultation', or post them to:

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

We also welcome comments particularly on the proposed text of the draft code of practice, which we have published alongside this document.

Where you wish to suggest a change to the current drafting, it would be particularly helpful if you could provide specific revised text, marked-up against the published version, in order to help expedite the process of producing the next version of the code.

If you wish to discuss any aspect of this consultation or the accompanying code of practice, please contact Rowaa Mahmoud on 0121 644 7503 or by email at rowaa.mahmoud@ofwat.gsi.gov.uk.

Subject to the outcome of this consultation, we are aiming to publish our final code of practice by the end of **May 2015**. More broadly, we are keeping the effectiveness of our new customer protection arrangements under review and its impact would be considered after market opening to ensure we make the market effectively competitive and any arrangements are fit for purpose.

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 1988 and the Environment Information Regulations 2004. If you would like the information you have provided to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice' with which public authorities must comply and 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, in itself, be regarded as binding on Ofwat.

1. Executive summary

The Water Act 2014 will allow all non-household customers who use the supply system of undertakers whose area is wholly or mainly in England to choose their supplier of water and wastewater retail services from April 2017. This will allow approximately 1.2 million eligible businesses and other non-household customers – such as charities and public sector organisations – to be able to shop around for their water retailer.

In line with our statutory duties, we must ensure that those new market arrangements provide real choice for customers and that through their ability to shop around they can get the price and service package they want from their supplier. This, in turn, will support and enhance levels of trust and confidence in the provision of water and wastewater services through the new market arrangements in line with our new strategy.

The best protection for customers will be an effective set of market arrangements that drive high levels of competition amongst retailers. However, the experience of retail or 'supply' markets in other utilities suggests that some additional regulatory protections may be needed for some customers in certain circumstances. There are currently a range of regulatory protections for non-household customers that may continue in the new retail market and new arrangements under development. For example:

- in line with the new legislation, we are proposing to extend the Guaranteed Standards Scheme (GSS) to ensure that minimum service standards are enjoyed by all customers in the new market, not just undertakers' customers;
- we have consulted on the proposed arrangements for interim supply to ensure that there is continuity in the retail service where suppliers cease to supply their customers; and
- this year we will undertake changes to our non-household retail price control arrangements beyond 2017. While licensees will not be directly price controlled at this time, the retail exit code extends some of the price control protection to transferred customers and small and medium sized businesses, at least in the early years of the development of the market.

In December 2015, we published 'Protecting customers in the non-household retail market – a consultation' (the 'December consultation'), which explored what additional customer protection measures would be appropriate in the expanded non-household retail market after April 2017. The consultation examined the experiences of other regulated utility sectors, and included a proposal to introduce a mandatory Customer Protection Code of Practice ('the code of practice') for all retailers through a licence obligation on all Water Supply and Sewerage Licensees (WSSLs) and appointed companies. It also included 17 customer protection proposals that we proposed to include in the code of practice.

In light of the responses we received, we consider that our final proposals strike the right balance between upholding the key protections for customers while not introducing unnecessary and burdensome barriers to entry and expansion that could reduce choice and have a chilling effect on levels of competition in that market, thus reducing its effectiveness for customers.

Our proposals recognise, as regulators in other utility sectors have, that it is likely to be smaller customers that are at greatest risk and most in need of protection. Smaller customers will have less buyer power in negotiations with suppliers and may have less time and resources to engage with the market. Therefore, most of our proposals are targeted at the very smallest customers with fewer than ten employees.

We note that the Competition and Markets Authority (CMA) is conducting an investigation into the supply and acquisition of energy in Great Britain and has recently issued its provisional decision on remedies. We have also considered those provisional remedies in finalising our proposals and would welcome any further feedback from stakeholders about any potential concerns, inconsistencies or lessons that we could learn from the CMA's review.

1.1 Summary of responses to our consultation

Table 1 below summarises the feedback from our consultation for each topic. These views have played a central role in our further policy development. Chapter 3 includes more detail about how responses have informed each of our final policy proposals.

Table 1: Key topics and summary of feedback

Issue	Initial proposal	Summary of feedback	Final proposal
Regulatory approach	**Proposal 1:** All retailers to comply with a new Customer Protection Code of Practice.	Most respondents agreed with our proposal to introduce a mandatory code of practice. Only two respondents noted that this should be an industry-led code. There were mixed views on how to classify market segments, with suggestions to use consumption, employee numbers or a combination of both these measures. Some respondents suggested that the code of practice should be developed so that it applies to all customers equally. Others agreed with our proposal to target smaller customers only for certain protection measures.	**Limited change:** We continue to propose to: a. Require all retailers to comply with a new Customer Protection Code of Practice that is given effect by a licence condition. b. Use a principle based approach to regulation wherever possible, in line with our strategy. But we propose to focus our protections on micro-businesses rather than SMEs as well. We also propose to define micro-businesses as those with fewer than ten employees rather than using consumption or some other measure.
Sales and marketing	**Proposal 2:** Regulate the quality of information provided during sales and marketing activities in relation to micro-businesses. **Proposal 3:** Retailers to provide certain basic information in a standard template format, to allow micro-businesses to compare different deals. **Proposal 4:** 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.	Our proposal on the quality of information provided during sales and marketing activities was supported overall. There were some caveats to the general support for retailers to provide basic information in a standard template format and some respondents were concerned that this may be too prescriptive and have the potential to stifle innovation. Most respondents agreed with retailers taking reasonable steps to ensure third party intermediaries (TPIs) acting as agents on their behalf are aware of and	**Limited change:** We continue to propose to: a. Regulate the quality of information provided during sales and marketing activities, in relation to micro-businesses'. b. Require retailers to provide certain basic information to allow micro-businesses to compare different deals but we are not proposing to prescribe a billing template. c. Require retailers to take reasonable steps to make sure that any TPIs

Issue	Initial proposal	Summary of feedback	Final proposal
		follow the provisions of the code of practice. There were some caveats to this support – particularly in relation to different types of TPI and the extent of interaction and influence that companies may have with them to obligate them to follow the code of practice. Respondents were positive about having a voluntary accreditation scheme for TPIs.	acting as agents on their behalf are aware of and follow the provisions of the Customer Protection Code of Practice. We are minded to make a distinction between a TPI that is acting on behalf of the customer and a TPI that is acting on behalf of the retailer.
Contracts and information	**Proposal 5:** Standards of conduct for retailers in relation to their contracts with micro-businesses. **Proposal 6:** Retailers to provide certain minimum information to micro-businesses. **Proposal 7:** 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. **Proposal 8:** Retailers to offer micro-business customers a cooling-off period of at least seven calendar days. **Proposal 9:** Retailers to be required 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. **Proposal 10:** Retailers to be required to obtain a copy of confirmation in writing	There was general support for our proposal on standards of conduct for retailers in relation to their contracts with micro-businesses, although some respondents advocated applying this to a wider range of customers. In relation to providing certain minimum information, respondents suggested making classifications of SMEs simpler or applying this to all consumers. Some respondents agreed with the information to be provided on customers' bills, while others thought this proposal was too prescriptive or highlighted practical problems with this approach. Most respondents agreed with our proposal to offer micro-business customers a cooling-off period. But a few respondents expressed concerns on how the cooling-off period would work.	**Limited change:** We continue to propose to: a. Regulate standards of conduct for retailers in relation to their contracts with micro-businesses. b. Require retailers to provide certain minimum information to micro-businesses. c. 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. d. Require retailers to offer micro-business customers a cooling-off period of at least seven calendar days. e. Require retailers to take active steps to confirm that micro-businesses are aware of, and understand, the terms

Issue	Initial proposal	Summary of feedback	Final proposal
	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.		of the proposed contract before they agree to it. Require 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. f. Require retailers to obtain a written consent from the customer before they roll over the contract for another year. g. Require 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. We intend to do further work on this 'letter of authority'.
Switching process	**Proposal 11:** Retailers to be required to take all reasonable steps to ensure that they have a valid contract with the customer before they request a switch. **Proposal 12:** 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.	Respondents were largely in agreement with our proposal to require retailers to take reasonable steps to ensure they have a valid contract with the consumer before they request a switch. Respondents also largely agreed with our proposal for outgoing retailers to inform and advise customers on issues relating to the switching process.	**Limited change:** We continue to propose to: a. Require retailers to take all reasonable steps to ensure they have a valid contract with the customer before they request a switch. b. Require 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.

Issue	Initial proposal	Summary of feedback	Final proposal
Billing, back-billing and data quality issues	**Proposal 13:** Retailers to issue at least one accurate bill each year to micro-business customers and for metered micro-businesses customers to take a meter reading at least twice a year. **Proposal 14:** Retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract. **Proposal 15:** Retailers to base their final bill on the transfer read provided by the incoming retailer. **Proposal 16:** Retailers prevented from back-billing eligible non-household customers unless the customer has behaved inappropriately. **Proposal 17:** 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.	Our proposal relating to issuing at least one accurate bill each year received general support. There were strong suggestions that customer or remote reads should be accepted and companies suggested that the minimum number of reads per year should be one rather than two. Respondents expressed broad support for retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract. There were some caveats in the overall support for our proposal on retailers to base final bills on the transfer read from the incoming retailer. There was considerable resistance from water companies on back-billing because of the inconsistency between wholesale and retail charges. Concerns were also raised about the appropriateness of limiting back-billing more broadly. Consumer groups generally supported a defined back-billing period of one year. Respondents were in favour of offering micro-businesses a reasonable payment plan with any back-bill.	**Limited change:** We continue to propose to: a. Require retailers to issue at least one accurate bill each year to all micro-business customers and, for metered micro-business customers, to take a meter reading at least once a year, rather than twice. b. Require retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract. c. Require retailers to base their final bill on the transfer read provided by the incoming retailer. d. 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. e. Prohibit retailers from back-billing beyond the previous financial year but we have removed references to situations where the customer has behaved in-appropriately.

Issue	Initial proposal	Summary of feedback	Final proposal
Complaint handling and dispute resolution	**Proposal 18:** Retailers to be required to have an effective complaint handling process and to join the WATRS water redress scheme.	Our proposal for an effective complaint handling process received broad support, although many respondents thought that prescribing the current voluntary Water Redress Scheme (known as WATRS) was too restrictive.	**Limited change:** We continue to propose to require retailers have an effective and easily accessible complaint handling process and redress scheme but we have no longer specified that this must be WATRS. We propose to consider defining a set of criteria that any scheme should meet- similar to those in the energy sector.

2. Our approach

In our December consultation, we explained that 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 developed a set of policy objectives to guide our regulatory work in relation to the opening of the new retail market. These are set out elsewhere – for example, in our consultation on deemed contracts – and seek to balance the protection of customers with the promotion of competition as previously described.

Our approach involved examining the experience of the market through the eyes of the customer and developing a model of the journey of a typical customer in the market. We then examined the experience of supply markets in other utility sectors against that model and sought to identify issues in those sectors that might give rise to consumer detriment at various points in that journey.

In our December consultation, we also explained that there are a range of other protections for customers. Having identified those areas of risk or concern, we then sought to consider those issues against the existing protections that are already in place to identify potential gaps. There are a range of existing regulatory protections in place for customers, including the following.

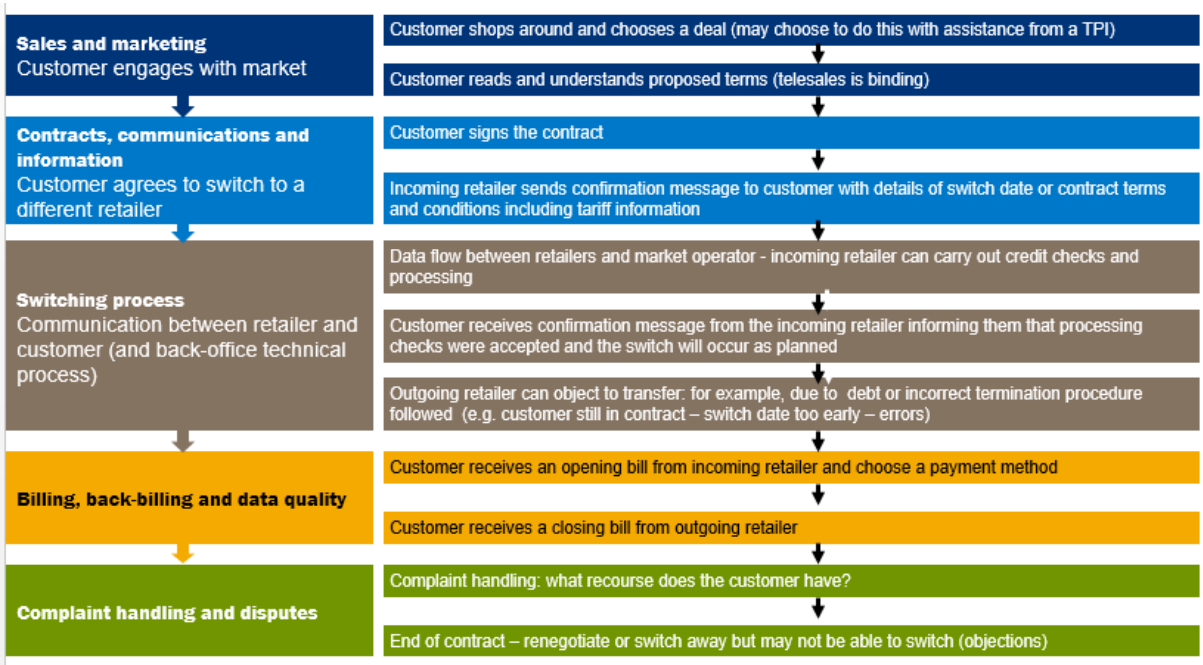
1. **Other elements of the market architecture that we are finalising**, such as:
   - interim supply and retail exit code arrangements to ensure continuity of service in all circumstances, including where a supplier leaves the market;
   - requirements for certain minimum service standards through the GSS;
   - price protections for customers through the formal price controls; and
   - with the exception of the price control arrangements, all of these arrangements are a requirement of the legal framework – that is, the protections that we must provide.

2. **The broader legal framework of consumer protection law.**

Our approach sought to identify gaps across all these areas to ensure that our interventions do not duplicate or overlap with other arrangements. In relation to our proposed regulatory measures to cover sales and marketing activities, we would seek to agree a Memorandum of Understanding (MoU) with the Competition and Markets Authority (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 Business Protection from Misleading Marketing Regulations (BPMMRs) and our Customer Protection Code of Practice.

The customer journey diagram set out in figure 1 below outlines the areas we have considered when looking at the steps the customer takes when engaging with the market. It shows the key steps in the customer's engagement with the market and the processes the customer will experience when changing to a different retailer or contract. This diagram also summarises the areas we have focused on in our previous consultation, and we have continued to use the areas for informing the proposals in this document.

Figure 1: Developing our final proposals



3. Protecting customers in the non-household retail market – our final proposals

This chapter sets out our final policy proposals for the code of practice based on feedback to:

- our December consultation;
- workshop discussions with stakeholders; and
- our own further work and judgement.

We have presented our policy proposals against each of the five elements of our customer journey (as set out in figure 1 above).

For each proposal, we set out:

- our consultation proposals from December;
- a summary of the feedback and key points that stakeholders raised in response to our proposals, including the levels of support for them;
- what our final policy position is and why; and
- where in the code of practice the policy is set out.

Our final proposals aim to provide proportionate protection for customers in the market against potential risks that we have identified from our analysis of retail or 'supply' markets in other sectors. We consider that our proposals should provide this protection while not creating unnecessary or undue barriers to entry or expansion in the market that would harm levels of rivalry and the effectiveness of the arrangements for customers.

We have set our all of our proposals in the draft code of practice that accompanies this consultation. We invite comment from stakeholders on the draft code of practice and include some targeted questions below in specific areas. We will consider responses made to the code and the policy proposals within it, including, in particular, the code governance arrangements set out in chapter 4. Following the consultation, we aim to implement the code of practice through licence obligations. We do not expect to make major revisions to the code of practice unless stakeholders raise new or significant issues.

3.1 Our overall regulatory approach

3.1.1 Our consultation proposals

In our December consultation, we proposed to introduce a mandatory code of practice to protect customers in the non-household retail market through a licence obligation rather than some form of voluntary or self-regulatory arrangement.

We suggested that any protections should be targeted particularly at smaller customers that were at greater risk. In doing this, we recognised that these customers are likely to have relatively lower levels of negotiating or buyer power than larger customers. We proposed to target some of our protections on small and medium-sized enterprises (SMEs) and some on micro-businesses, and described some of the different ways in which these different groups could be defined and the relative merits of these approaches. We sought views on whether and how we should target our protections, and how we might define these smaller customer groups.

Finally, we intended our approach to providing these protections to be principles based, in line with our 'Trust in water' strategy wherever possible. Our aim was to encourage suppliers to focus on and own the relationships with their customers rather than the regulator. But we also recognised that, in some instances, a more prescriptive approach was needed to meet the policy objective.

Our original 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... The Customer Protection Code of Practice would be mandatory because it would be the subject to a condition in both the WSSL and Instruments of Appointment.

3.1.2 Consultation feedback

Nearly all respondents to the consultation supported a mandatory code of practice implemented through a licence condition on all suppliers. Two respondents, however, considered that the code should be sector-led rather than a regulatory obligation noting that this would be less burdensome on retailers.

In relation to targeting our proposals, stakeholders recognised in principle the benefit of focusing our interventions on higher-risk customers. They noted that smaller business customers might behave or face similar risks to residential customers warranting greater protections. But few respondents considered that our proposed approach of targeting some proposals on SMEs and others on micro-businesses was proportionate.

About half of the respondents considered that the additional measures should only apply to micro-businesses, largely to avoid the additional administrative cost of identifying these different groups (SMEs and micro-businesses). The remaining respondents considered that the code of practice should simply apply equally to all customer groups for similar reasons of avoiding the need to identify different sub-sets of customers on which to target protections.

There were also differing views among stakeholders on how best to define the smaller businesses on which we should target these protections. Several suppliers noted the benefits of choosing a metric based on consumption, which could be defined in the market dataset and which was information that suppliers would hold, rather than information they would have to seek from the customer, which may or may not be easily provided.

Some consumer groups emphasised that consumption was not always a good guide to identifying higher-risk customers, as some customers with larger consumption may actually be very small businesses and vice versa. Instead, they suggested a definition based on number of employees or turnover, possibly aligning our approach with the Small Business, Enterprise and Employment Act 2015, which is currently being brought into force. They also emphasised that this is the approach most commonly adopted by other regulators for targeting these sorts of interventions. Some respondents suggested using a combination of consumption and employee numbers.

3.1.3 Our final proposals

Having considered stakeholders' responses, we maintain our original view and propose to require all retailers to comply with a new mandatory code of practice through a licence/appointment obligation on all those operating in the market (including appointees and new WSSL retailers). In chapter 4, we set out in more detail how we could take the governance of the code forward.

Our December consultation proposed specific protections for SMEs. In response to feedback, we propose to limit some protections to micro-businesses, and not have a further defined group on which protections are targeted. We expect that this approach will reduce entry barriers and the administrative costs of identifying this additional group without substantially reducing the coverage of our protections for customers that may need them.

We also propose to define micro-businesses as those customers with fewer than ten employees as set out in section 1.1 of the draft code of practice. We considered carefully whether protections should be targeted on customers below a certain consumption level, but shared the concerns of consumer groups that this would not target our proposals most effectively. We think that a definition based on fewer than ten 'employees' rather than 'full-time equivalents' (FTEs) or one seeking turnover, or some combination of the two should also be a simpler definition and may be easier information for suppliers to seek from customers.

We also recognise, based on feedback received that all customers would benefit from retailers acting in accordance with some overarching principles, based on those set out below, which have shaped the development of our policy in this area.

Guiding principles

All retailers shall comply with the following principles when dealing with non-household customers.

1. Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business.
2. Communication with non-household customers shall be in plain and clear language.
3. Retailers shall ensure they provide appropriate and timely information to non-household customers to enable them to make informed choices.
4. Any information provided to non-household customers shall be complete, accurate and not misleading.
5. Retailers shall respond to non-household customers in an appropriate and timely manner.
6. Customer service arrangements and processes shall be accessible to and effective for non-household customers.

These have been inserted into the proposed code as general obligations in section 4. However, given their importance as overarching standards to be met by retailers we would welcome views on whether these principles should be in the licence/appointment condition itself and correspondingly removed from the code of practice.

3.2 Sales and marketing activities

3.2.1 Our consultation proposals

Our December consultation highlighted the importance of protecting customers, especially in the early stages after the market opens when customer awareness and experience of the new arrangements would be low. We explained that customers need to have the necessary information to make well-informed decisions and that we wanted to make sure that all eligible non-household customers could:

- **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.

To ensure all customers are able to access, understand and act on relevant information we proposed including the following policy proposals in the code of practice.

Our original proposal 2:

Regulate the quality of information provided during sales and marketing activities in relation to micro-businesses.

We proposed that the code of practice should include provisions to:

- govern the quality of sales information provided to customers during the sales process, including 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 alternative deal.

Our original proposal 3:

Retailers to provide certain basic information in a standard template format, to allow micro-businesses to compare different deals.

We also proposed that retailers should provide certain basic information, such as:

- contracts terms and conditions;
- the tariff and details of how the bill has been calculated; and
- the customer's supply identification number (SPID).

And we queried whether this should be provided in a standard format, to enable micro-business customers to compare like with like and make an informed choice before agreeing a contract. We sought views on whether this should be provided to all customers.

Our original proposal 4:

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.

Our consultation recognised the important beneficial role that TPIs can play – both in encouraging customers to engage with the market, increasing levels of switching and the effectiveness of competition, and also driving up standards or service among intermediaries through self-regulated codes of practice.

But we were aware of the issues that have arisen in other sectors, and proposed considering whether there was 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. We noted the timescales for developing this and the experiences in other sectors and explicitly sought stakeholders' views in this area.

3.2.2 Consultation feedback

Respondents generally agreed with our proposal that the quality of sales and market information should be regulated (original proposal 2) and that comparative information on potential savings from switching should be robust with assumptions clearly documented. One respondent considered that this proposal should apply to all customers, not just micro-businesses.

We received a variety of different views about our proposal to introduce a standard billing template should be introduced to help customers compare different offers (original proposal 3). All consumer groups agreed strongly with this proposal, recognising the risks and issues for smaller customers in this area. Most of the other respondents gave qualified agreement but with various caveats. For example, three respondents thought that this proposal should apply to all customers and should include information about what happens if the contract is terminated early. Some respondents agreed with a simple standard format, while others considered a standard format was not needed and would create a barrier to entry or stifle innovation among suppliers. Some also noted practical difficulties of agreeing formats early to allow sufficient time for system changes before the market opens, etc.

Similarly, there were mixed views about our suggestions that it may be appropriate to regulate third party intermediaries – or 'TPIs' (original proposal 4). Most respondents agreed, noting that it is important for TPIs to have the same standards of conduct as retailers in relation to their engagement with customers. Consumer groups agreed and mentioned this should be consistent with other industry work. One respondent, however, considered that this would be an inappropriate obligation on retailers as they should not be responsible for the behaviour of a third party and noted Ofwat's limited powers to regulate in this area in any event. Another said that this should apply for contracts between the retailer and the TPI, but that the retailer could not have any obligation to check the agreement between the TPI and the customer.

There was also a view that a TPI acting as an agent is not a third party intermediary, they can only be a first party intermediary (FPI), as they are required to offer products only marketed by the person to whom they report. It was suggested that we make this distinction in the code, we agree with this view. See sections 6.3 and 6.4 in the code of practice.

We also received positive responses about having an industry, voluntary or self-regulated code of practice or accreditation scheme for TPIs, noting the additional benefits of this without the need for regulatory intervention and the associated burdens. One respondent disagreed with the proposal, saying that it would add unnecessary complexity. Some respondents agreed with the proposal in principle, but had concerns about how it would work in practice and whether a voluntary code would have any effect as it is not enforceable.

3.2.3 Our final proposals

We are satisfied that protection against misleading sales and marketing activities could have a positive effect. So, we maintain that proportionate customer protection is required in this area.

We still think that the code of practice should govern the quality of sales information provided to micro-businesses during the sales process. This would include requiring retailers to:

- provide customers with access to relevant information verbally or in writing during the sales process so that they are aware of their choices and can search for alternative deals before agreeing a contract; and
- provide micro-business customers with details of the assumptions used in any illustration of the savings a customer may make by switching to that contract.

This is set out in section 6.1 of the draft code of practice.

Some stakeholders supported a prescriptive billing format to ensure customers can easily understand and compare deals. We have considered carefully whether any regulatory intervention is required in this area, but we are minded not to prescribe any billing format for retailers to follow at this time. This will give retailers freedom over the design of their bills without impeding innovation and creating unnecessary barriers to entry. However, we have also concluded that the code of practice should require retailers to provide micro-businesses with certain basic information in a standard format so that they can compare different deals. This information would include:

- the customer's Supply Point Identification (SPID) number (s) to enable easier switching;
- the tariff and details of how the bill has been calculated;
- any expiry date of the applicable terms and conditions of supply;
- ways to pay an outstanding debt;
- details of the supplier's complaints procedure; and
- other useful third party contact details, including those of Ofwat and the Consumer Council for Water (CCWater).

This is set out in sections 6.1 and 9.1 of the draft code of practice.

We consider that retailers should take reasonable steps to ensure that any TPI (agents) acting on their behalf to provide sales and marketing activities are aware of, understand and adhere to the provisions of the code of practice. This requirement is set out in section 6.3 of the draft code of practice.

Although we consider that these interventions are sufficient for the opening of the market, we would support a sector-led accreditation scheme for TPIs. We are aware of a number of these industry-led and self-regulated arrangements in other sectors, and consider that such an arrangement may support more effective conduct among TPIs. Unlike some other regulators, we currently have no powers to regulate TPIs directly.

3.3 Contracts and customer information

3.3.1 Our consultation proposals

Our December consultation highlighted that the opening of the new retail market is likely to involve the movement of customers from a current statutory arrangement onto a contract is a significant and important change. It gives the customer the opportunity to negotiate bespoke terms and conditions to suit their needs and a further route to redress through the courts where suppliers fail to meet the terms of the contract.

We also noted non-household customers are generally expected to have greater capacity and capability than residential customers to understand and agree contractual terms. But smaller non-household customers may be an exception to this. Experience in other competitive markets has shown that their bargaining power is more closely aligned to that of residential customers. We considered a number of potential issues for micro-businesses in this area, including:

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

In our December consultation, we proposed that the code of practice should include the following.

Our original policy 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.**

This is to ensure retailers communicate effectively with their non-household customers before a contract is agreed, and during the course of that contract ensure that contract terms are fair and reasonable.

We proposed that there should be a set of principles for all retailers that require them to carry out the activities set out above. We also proposed to work with suppliers and customer groups to develop a template contract that is clear and easy to understand, but we did not propose to require suppliers to use that contract.

Original policy proposal 6:

Retailers to provide certain minimum information to micro-businesses.

In an overlap with original proposal 3, we proposed that retailers would be required to provide certain information to smaller customers, including:

- a written copy of the terms and conditions where there is a contract with details of any cancellation rights;
- the end date of the contract and any requirement for customers to give notice to terminate the contract. For fixed-term contracts, we proposed 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 for the Consumer Council for Water (CCWater).

Original proposal 7:

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

We proposed to support levels of customer engagement with the market by requiring retailers to provide certain basic information informing the customer that they can switch supplier, and also ensuring that customers SPID number(s) were provided on bills.

Original proposal 8:

Retailers to offer micro-business customers a cooling-off period of at least seven calendar days.

To provide customers with the opportunity to change their minds and to allow time for any issues of mis-selling to be identified and resolved, we proposed a cooling-off period of seven calendar days. We also sought views on whether customers could 'opt out' of such an arrangement if they wanted to switch more quickly.

Original 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.

Original 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.

To ensure that all customers – micro-businesses in particular – understand the terms of their contract before they agree to it, we proposed introducing a principle requiring all retailers to take all reasonable steps to confirm that micro-businesses are aware of, and understand the terms of, the proposed contract. For customers that have a TPI acting on their behalf, we proposed that the code of practice would require retailers to obtain written confirmation (a letter of authority) from the prospective customer that the TPI is acting on their behalf and the extent of that authority.

3.3.2 Consultation feedback

In general, respondents expressed support for our original proposal 5 to provide certain requirements to regulate the contract terms and conduct of suppliers in relation to micro-businesses. All consumer groups strongly supported this proposal, noting that clear information is important for customers. A few respondents thought that this proposal would benefit a wider range of customers and should not just be focused on micro-businesses. One respondent agreed with some level of detail in the proposal, while two others thought that the proposal was too prescriptive and set out too many requirements.

There was some agreement for our original proposal 6 to provide certain basic information to micro-businesses. But three respondents suggested that the minimum information provisions should apply to all customers to minimise administrative burdens, while two others also noted that identifying customer segments would be too onerous and there were a number of other suggestions on making classifications simpler. Consumer groups favoured making this proposal apply to a wider group of customers.

Three respondents disagreed with our proposal, noting that roll-overs should be allowed, and that information formats should not be specified. In addition, discussions and feedback from stakeholder workshops suggest that the information we are proposing should be provided is appropriate, but that it should not be in a prescriptive format as this limits innovation.

About half of the respondents agreed that SPID numbers and information about customers' ability to switch should be provided on bills to help switching. They recognised that it is important to ensure customers have comparative information and that it should be written in plain English. Most consumer groups agreed. Some respondents were concerned that putting SPID numbers on bills would be impractical where the customer has many premises on their account. One respondent said that the sector should lead on deciding what information goes onto customer bills and statements, and two others also disagreed with the proposal, noting that it was too restrictive.

While there was some agreement to providing a cooling-off period, several respondents expressed concern about how this would work with the codes and the impact it would have on the switching process. Four respondents thought that a cooling-off period should not be required for non-household customers they noted that businesses should be more confident than residential customers in making decisions and that it could make the switching process longer. A few others commented on the potential to allow customers to opt out of the requirements, but said that this would create confusion. One consumer group said it would be more straightforward for the cooling-off period to be consistent with distance selling regulations – and therefore should be 14 days otherwise it would be distinct from both normal commercial contracts (which they considered do not usually have a cooling off period) and other regulations which are generally 14 days.

3.3.3 Our final proposals

We remain of the view that retailers should be transparent with all of their customers about contracts terms and conditions. We propose that the code of practice includes a principle requiring retailers to use contract terms that are fair, transparent and written in plain language. We also propose that termination fees are set out clearly in the terms and conditions. These requirements can be found in sections 6.1 and 7.1 of the draft code of practice.

We also remain of the view that smaller customers might have problems understanding terms and conditions. To minimise the risk of unfair or misleading terms, we continue to think that our proposal to set standards of conduct for retailers in relation to their contracts with micro-businesses is appropriate.

In the draft code of practice, we have required retailers to set out contract terms clearly in plain language and in writing in a way that is easy to understand. This includes setting out contracts in writing, with the main terms presented in a straightforward way so that micro-businesses are able to understand the basis on which the contract can be terminated or renewed. We also propose requiring retailers to remind micro-businesses on every bill if they are on a fixed term or deemed contract. These requirements are set out in section 9.1.1 of the draft code of practice.

We also proposed that the code of practice should prevent retailers from automatically rolling a contract over, and require them to obtain written consent from customers before renewing a fixed-term contract for a maximum of one year. These requirements are set out in section 7.3 of the draft code of practice. While most respondents agreed with this, some highlighted potential gaps in the event that a non-household customer does not provide written agreement and the contract expires as a result. We note that in an exit area a scheme of terms and conditions of an eligible licensee would be available if the negotiated contract expires, unless the customer has provided the written consent to roll over another contract for one year. In a non-exit area, the relevant undertaker would be under a continuing statutory duty to provide a supply.

We recognise that there is a potential issue aligning a ban on automatic roll-over contracts and the broader framework. We propose to explore how we implement this with the UK Government in the next few months to ensure that the customer continues to be supplied, and consistency across the relevant retail market opening documents.

To help the market work effectively in the best interests of customers, we consider that some information will need to be provided to customers before the market opens and on a regular basis afterwards. So we maintain that retailers should 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. These requirements are set out in section 9.1.1 of the draft code of practice.

Finally, we considered the feedback we received and think that a cooling-off period would bring benefits to the retail market. We maintain that retailers should offer micro-business customers a cooling-off period of at least seven calendar days, and that it should start on the day after the day on which the contract was signed. This time period was supported by most respondents and appears proportionate to the risk, we do not consider that it is necessary for the time period to be consistent with the consumer distance selling regulations. We also agree that allowing customers to opt out would add complexity to the process. So we are minded not to proceed with this particular option. We have considered the interactions with the switching process set out in the codes and think that the cooling-off period can be accommodated by not initiating the switching process before the period has lapsed. We have set out these requirements in section 6.2 of the draft code of practice.

For customers that have a TPI acting on their behalf, we proposed that the code of practice would require retailers to obtain written confirmation from the prospective customer that the TPI is acting on their behalf and the extent of that authority – including how TPI's fees are being paid. These requirements are set out in section 6.4.1 of the draft code of practice.

3.4 The switching process

3.4.1 Our consultation proposals 6.4.1

In our December consultation, we highlighted the importance of a customer having a clear and effective switching process to increase customer engagement with the market. We also noted that issues such as erroneous transfers and cancellations, which can arise in the switching process, are likely to cause inconvenience and added costs to customers. This could affect their engagement and experience in the market in the future. We noted that the 6- to 20-day switching process set out in the draft market codes seemed reasonable in light of the experience of other sectors.

To address some of the potential issues associated with customers being switched by mistake we proposed the following.

Original proposal 11:

Retailers are required to take all reasonable steps to ensure that they have a valid contract with the customer before they request a switch

To avoid some of the erroneous transfer issues experienced in other sectors and to ensure that customers are only switched when they want to be, we proposed that the code of practice would require retailers to take reasonable steps to ensure that they have a valid contract with the customer before they request a switch.

Original proposal 12:

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. We propose that this measure would apply to all eligible non-household customers.

To ensure that customers are aware that a switch has been cancelled and to support transparency and avoid the misuse of the switch cancellation process, we proposed that all suppliers should be required under the code of practice to:

- inform the customer where a switch has been cancelled; and
- set out the reasons why this is the case and the timescales for resolving the issue so that the switch can progress.

3.4.2 Consultation feedback

Respondents were largely in agreement with our original proposal 11 to take all reasonable steps to ensure that there is a valid contract in place before a switch is taken forward. One consumer group noted that the cooling-off period would also help address the risk of customers transferring by mistake. Other respondents also noted that it is the retailer's responsibility to ensure there is a valid contract in place. One respondent highlighted that it is important to ensure the definition of contract is clear so that there is no confusion with common law. And another said that this could add to the length of the switching process, especially if there is a cooling-off period to consider.

Most respondents agreed with the switching timescale and considered it was sensible. One respondent thought that the timescale should be 10 to 20 days instead, and another suggested that if large numbers of customers switch when the market first opens, then this could be challenging. Another noted that if a large multi-site customer switches, then this may be difficult to manage in the timescale.

Most respondents agreed with our original proposal 12 about informing the customer in the event of a cancellation, noting it is important for the customer to be fully informed and understand how to resolve the issue. A few respondents said that if there was a TPI involved or the cancelation request came from the incoming retailer, then they should be the ones to communicate the reason for the cancellation to the customer – that is, the party raising the objection should be required to communicate that with the customer. Another noted that, for consistency, there should only be one point of contact for the customer, so the incoming retailer should communicate any reasons for the switch being cancelled on behalf of the outgoing retailer. One respondent considered this proposal to be too onerous as writing to the customer each time would be costly. The same respondent also noted that it did not address issues of erroneous blocking.

We received a number of responses about switch blocking based on debt. In general, respondents agreed that switches should be allowed to be blocked based on debt on the account as this was an important tool for retailers to be able to recoup charges. One respondent also noted that experiences in the energy market have shown that it can be much more difficult to recover charges once a customer has left. Consumer groups also considered it was reasonable to allow switches to be blocked on the grounds of debt as long as what constituted 'debt' was defined clearly. They suggested that there should be a process for debt issues to be resolved quickly, and that debt which has been outstanding for less than 90 days should not count as a valid reason to block a switch and that circumstances when an outgoing retailer could prevent a customer from switching need to be tightly defined (for example, 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). We agree with this view and will keep this area under review.

3.4.3 Our final proposals

We have taken into account respondents' views on retailers' obligations to take all reasonable steps to ensure they have a valid contract with the customer before requesting a switch through the market operator. We remain of the view that it is important to identify any errors as early as possible. So we think that the code of practice should include this proposal. This is set out in section 8.1.1 of the draft code of practice.

We also proposed that the code of practice would require an outgoing retailer to inform the affected customer of the reason for any cancellation of the switching process. Again, we have taken respondents' views into account but remain of the view that to help retain customers' trust in the market the outgoing retailer would be best placed to advise on the reason for cancelling the switch and how to resolve the issues as well as making the customer aware that they have 90 days to formally dispute the debt, as set out in the Wholesale–Retail Code. In addition, the ongoing contractual relationship would then be with that retailer, providing some consistency for the customer. This proposal can be found in section 8.2 of the draft code of practice.

Where switching has been blocked because the customer is in debt, we consider that all eligible customers should be offered a reasonable payment plan by the outgoing retailer so that the debt is repaid as efficiently as possible to enable the customer to re-engage with the market at the earliest opportunity. This proposal is set out in section 8.2.2 of the draft code of practice. In our December consultation, we highlighted that the Department for Business, Innovation and Skills (BIS) has consulted on a set of switching principles and that our proposals set out in that consultation are consistent with these principles. One of these principles is that:

> "switching should be free to the consumer unless they are aware of, and have consented to, reasonable restrictions and charges to do so".

We agree that customers should be able to engage in the market and that market arrangements should facilitate such engagement. Where the customer has agreed a debt payment plan with the outgoing retailer, they may be able to agree with the new retailer arrangements for that retailer or a third party agency to acquire the debt so they could switch. One view is that linking the ability to switch to certain debt thresholds may increase customers' engagement, for example if the debt is less than 10% of the customer's bill, the customer may switch. We are also aware that in the energy sector, objections to transfers are a contractual matter between the customer and supplier. These contracts usually allow objections if the customer is in debt or has provided insufficient notice of termination.

We will keep this area under review and welcome stakeholders' views on that.

3.5 Billing, back-billing and data quality issues

3.5.1 Our consultation proposals

Our December consultation highlighted the importance of customers receiving accurate bills in a timely manner, as this is the main interaction they will have with their water and/or wastewater services supplier.

We also noted that we were minded to do nothing further about billing frequency or payment methods at this time.

To reduce the likelihood of inaccurate billing for smaller non-household customers, we proposed including the following provisions in the code of practice.

Original proposal 13:

Retailers to issue at least one accurate bill each year to micro-business customers and for metered micro-businesses customers to take a meter reading at least twice a year.

To reduce inaccurate billing for smaller non-household customers, we proposed 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 proposed requiring retailers to take a meter reading at least twice a year for those customers. 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.

Original proposal 14:

Retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract.

A further consideration about the timeliness of bills is whether the outgoing retailer issues a final bill promptly after a customer has switched to a different retailer.

We explained that there will be greater incentives on retailers to issues 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 proposed to require retailers to issue a final bill within six weeks of the transfer.

Original proposal 15:

Retailers to base their final bill on the transfer read provided by the incoming retailer.

For all metered non-household customers we proposed to require retailers to base the final bill on the transfer read provided by the incoming retailer. We consider that the meter reading could be taken remotely, if the necessary equipment to do this is in place.

Original proposal 16:

Retailers prevented from back-billing eligible non-household customers unless the customer has behaved inappropriately.

We also recognised that there might 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. Initially, we said that retailers may only back-bill those customers if they can demonstrate that the customer has behaved inappropriately.

Original proposal 17:

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 recognise that a back-bill could cause significant customer detriment – in particular for fixed Direct Debit customers. We intend to limit customer detriment when these customers risk experiencing 'bill shock' because of a back-bill. This is the point at which retailers may ask them to 'triple' their monthly Direct Debit to pay off the debt very quickly.

3.5.2 Consultation feedback

Customer groups generally supported our proposals for micro-businesses to receive at least one accurate bill a year and have two meter readings a year, and the additional protection this would provide. Several respondents also thought that customer or remote reads should be treated as accurate readings. Six respondents disagreed with our proposal. They said it should not be mandatory and cited the increased administrative costs. Others said that it should be for individual retailers and customers to negotiate and agree the frequency of billing and meter reading. There was a view that requiring two meter readings per year is unwarranted and inconsistent with obligations regarding billing frequency elsewhere and the current industry practice, which customers appear to support. We agree with this view.

There was also broad support for our proposal to require retailers to issue a final bill to micro-businesses within six weeks of a switch or the end of a contract. Some respondents highlighted that if a late meter reading caused the delay, it must be recognised as a failure of the incoming retailer. One respondent said that all processes and requirements for micro-businesses should be consistent with all non-household customers. And one consumer group suggested that six weeks is long and should decrease as the market matures.

Most respondents agreed with our original proposal 15 to issue the final bill based on the transfer read of the incoming retailer, but caveated this. There was a call for a dispute process where retailers could dispute a reading and request a new one, or where the incoming retailer had not provided a reading. Consumer groups noted that more clarity is needed on customer safeguards if the read is inaccurate. And one respondent said that customers should be allowed to read their own meters, as is the case in other sectors where transfer reads are needed, to speed up switching.

Our proposals to limit back-billing to customers unless they have behaved inappropriately (original proposal 16) received resistance from companies for a number of reasons. Some argued against it on the basis that if the customer has been receiving the service, then they should be required to pay for it under the broader statue of limitations. Others were concerned that this could make retailers vulnerable to accepting wholesale charges that they could not pass on to their customers (leaving the retailers to bear the loss), and others still argued that there needs to be consistency between the wholesale and retail market.

One respondent that disagreed with proposal 16 stated that gap sites should be capable of being back-billed for six years, while others felt strongly that our proposal does not encourage correct customer behaviour. For example, a new occupier (customer) is not incentivised to contact the retailer as “the longer the delay, the longer their services are free”. Some argued that it would be extremely difficult and costly to prove that the customer had acted or behaved inappropriately.

Customer groups, however, welcomed the proposal to set a clear limit on back-billing. They agreed that it is appropriate for the retailer to bear the risk if it has failed to bill its customers in a timely and accurate manner and that the retailer should not be permitted to back-bill the customers concerned if it later discovers that the data was inaccurate.

In general, respondents supported our original proposal 17 to offer a payment plan in instances where there was a back-bill. Some suggested that the offer of a reasonable payment plan should be made to all customers. One respondent said this should not need to be prescribed, while another agreed with the proposal only in situations where the customer was not at fault. A third respondent said there should be more options for when back-billing is permitted. One respondent disagreed and questioned whether it is appropriate to protect a customer in this instance, given that back-bills can only be issued where the customer has behaved inappropriately.

We also noted 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. There is also an assurance framework in place already, through which appointed companies have to provide assurance about the quality of their data. Therefore, we propose not to include any further provisions on data quality in the code of practice at this time, but we intend to include this area in our monitoring once the market opens.

Respondents mostly welcomed our proposal not to provide additional regulation, although they acknowledged that this should be monitored. Some noted that data issues that appointed companies are currently addressing should not be left to be addressed by the retailers after market opening. This is because it would not be acceptable for an appointed company to allow a mismatch between the data it uploads to the market operator and the data it uses for retail billing.

3.5.3 Our final proposals

We propose that the code of practice should require retailers to provide all eligible non-household customers with at least one accurate bill a year. We accept the arguments respondents raised on taking meter readings more than once a year for micro-businesses. So, we propose amending this to apply the same rule requiring at least one meter reading a year to all customers, as well as allowing customers to submit their own readings. We have set these requirements out in section 9.2 of the draft code of practice.

We also continue to think that requiring retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract is appropriate as this should provide greater incentives on retailers to issue the final bill promptly to smaller customers. This requirement can be found in section 9.2.5 of the draft code of practice.

Based on feedback to the consultation, we propose using the code of practice to require retailers to base their bills on the transfer read provided by the incoming retailer. We noted that the Incoming retailer, as the organisation with most interest in making the switching process work effectively, should lead the switching process. This requirement can be found in section 9.2.1 of the draft code of practice. We note that Wholesale–Retail Code includes arrangements and procedures for dispute resolution between wholesalers and retailers.

Despite the scale of objection from appointed companies, we continue to consider that limiting the back-billing for micro-businesses to the start of the previous financial year is reasonable given the scale of the impact that this can have on such customers. Consumer groups also emphasised this point in their responses. This is consistent with the common practice in the energy market and longer than some other time limits in other countries'.

We also think that this proposal would place helpful incentives on retailers to get their data right from when the shadow market starts operating in October 2016 and beyond. We propose to continue with limiting back-billing, in relation to micro-businesses, to the start of the previous financial year (defined as 1 April to 31 March in line with the definition of Charging Year in the instrument of appointment). So, for the avoidance of doubt, for example in January 2018 an account could only be back-billed to 1 April 2016.

Based on the feedback we received, we also propose to ensure that this limit is consistent between wholesalers and retailers in relation to all non-household charges to avoid the risks identified. These requirements are set out in section 9.3 of the draft code of practice. We realise that rules set out in the market codes would need to be consistent with those in the code of practice, and will aim to consider the relevant links with Market Operator Services Limited (MOSL).

In our December consultation, we also suggested that one option would be to limit back-billing to cases where the customer had behaved inappropriately. The feedback we received suggested that it would be difficult to define inappropriate behaviour and several respondents sought further clarity on this. So, instead of describing situations where the customer or retailer were or were not at fault, we have dropped the reference to inappropriate behaviour in the draft code of practice entirely.

We maintain that retailers should offer micro-businesses a reasonable payment plan with any back-bill, to allow them to pay the bill in a number of instalments, and respondents supported this. Some asked for more clarification around what would constitute a reasonable payment plan. Our research suggests that other jurisdictions specify how back-bills are to be paid off. For example, in Victoria, Australia, suppliers

must allow the customer to repay a back-bill over the same duration as the back-bill period. We think that this is a reasonable approach, and have set out this requirement in section 9.3.2 of the draft code of practice. We recognise that where debts are significant there will already be strong incentives on companies to provide these, but we are seeking to ensure their availability through the code of practice.

3.6 Complaints handling and dispute resolution

3.6.1 Our consultation proposals

In our December consultation, we discussed the importance for all customers of having access to an effective process to resolve any disputes or complaints that may arise. We highlighted the importance of having a clear and effective route to resolve disputes or complaints to retain trust and confidence in the sector. To ensure all eligible non-household customers have access to an effective dispute resolution scheme, we proposed the following.

Original proposal 19:

Require retailers to have an effective complaint handling process and to join the WATRS water redress scheme.

3.6.2 Consultation feedback

There was broad agreement from respondents to this proposal – in particular, that there should be an effective complaints handling process. However, while most agreed to the proposal, some commented on the voluntary nature of the current WATRS, and that it was designed for a different purpose and might need reviewing to ensure it remained is fit for purpose. Others noted that a range of schemes were available and that WATRS was just one option and should not necessarily be prescribed. One respondent argued that costs of such an arrangement should be reflective for smaller companies. Another suggested that wholesalers as well as retailers should be required to sign up to the scheme. Consumer groups agreed this proposal should be mandatory, but highlighted that the role of consumer groups (including CCWater) in those processes should be defined.

3.6.3 Our final proposals

Having considered the responses we received, we continue to think that there is a need to ensure customers have access to an effective process to resolve disputes or complaints. But we recognise that, despite the sector-specific knowledge and experience of WATRS, there is no clear need at this time to prescribe a particular scheme, and that this may stifle innovation and improvement in these redress arrangements. Therefore, we propose to amend our original proposal to require all retailers to have in place an effective complaint handling process at no further cost to customers and that they sign up to a dispute resolution scheme that is readily accessible and effective for customers. We have suggested that an effective complaints handling procedure should:

- be in plain and clear language;
- allow for complaints to be made orally and/or in writing;
- describe the steps each retailer will take, with a view to investigating and resolving a complaint and the timescales within which each step is expected to be completed;
- describe any remedies available to the customer once a complaint has been resolved. Such remedies must include:
    - an apology;
    - an explanation;
    - remedial action;
    - compensation payable to the customer; and/or
    - describe any right to refer the complaint to a redress scheme.

Finally, we think that retailers should make a redress scheme available to its non-household customers where complaints cannot or are not resolved to the customer's reasonable satisfaction under the Complaints Handling Process.

This requirement can be found in section 10 of the draft code of practice.

We propose to consider defining a set of requirements that any scheme should meet, similar to those in the energy sector. We welcome stakeholders' views on this.

4. Code governance

As we have previously highlighted, we expect that the code of practice will be given legal force through a condition in licences and instruments of appointment. Suppliers operating in the market, either as appointed companies or as licensees (holding a WSSL), would be required to follow the code of practice.

There is already a proposed condition to give effect to the code of practice in the draft WSSLs that have been consulted on. We expect to consult on introducing a similar condition for Instruments of Appointment when we consult on other changes that are needed to open the retail market in 2017 in April this year.

On 16 February, we held a workshop with stakeholders where we discussed the issue of code governance and our thinking below reflects the feedback we received at that workshop.

4.1 Key issues for code governance

Based on the feedback we received at the workshop and our further thinking on this issue, we think there are two key issues that we need to consider to ensure that the governance model for the code is effective.

1. **The code of practice will need to evolve and change, and we need change management arrangements that are proportionate and efficient.** The code of practice will not be set in stone and as the market evolves new issues will emerge which may mean that its original provisions are no longer fit for purpose. As we gather intelligence about how the new market is operating and customers' experience in that market we may need to remove certain protections that are not working well or appear to be introducing considerable barriers to entry, or add new ones if new issues arise that warrant regulatory intervention. There may be instances where we need to seek relatively quick amendments to the code of practice, although not necessarily in the urgency required if, for example, a supplier goes into administration and we need to access the interim supply arrangements to ensure continuity of service for customers.

Similarly, we must recognise that if the code of practice changes, there may be corresponding impacts on companies operating in the market – for example, on their billing systems. So, it may be sensible to establish a common timeline for the changes to the code of practice to come into effect – that is, we might restrict changes to the code of practice to particular points in the year either overall or in relation to non-urgent changes.

Therefore, we need a governance model for the code of practice that facilitates sensible and proportionate change in a timeframe that is appropriate to the sorts of changes that we may expect to make and recognises the impacts on suppliers.

2. **There must be appropriate checks and balances in the code change process.** There is also an important need to consider the rights and experiences of licensees and appointees operating in the market and this relates to both:

   a. **'Who'** governs the code; and
   b. **'How'** the governance process works.

   Who? The code of practice seeks to cover specific areas of potential customer detriment/concern in the new market. We consider that these issues are quite different from those covered by, for example, the Wholesale–Retail Code and the Market Arrangements Code, which primarily seek to govern interactions and processes between retailers and wholesalers. So, we do not consider that a code panel with a similar composition to the existing Interim Code Panel (ICP) or the proposed enduring Panel of those codes would be appropriate to govern or assist with changes here. It would be possible to establish a new panel to govern changes to the code with a different and more appropriate composition, but this could be disproportionate to code changes, particularly if it would also be possible for Ofwat to simply make changes following the normal processes of consultation in line with its statutory duties. The latter may not be seen to provide appropriate checks and balances but it may also be possible to place some constraints in the licence condition itself on Ofwat's activities to provide greater comfort to companies and stakeholders in this regard.

How? Under the current licensing framework for the water sector, any amendment to the Instrument of Appointment requires the consent of each appointee in relation to their own instrument, and there are statutory time periods governing consultation on that amendment of 28 days. The process for amending standard licence conditions for suppliers holding a WSSL also involved a 28-day consultation but only requires consent of 80% of licence holders weighted by market share. Where licence or instrument of appointment changes are not agreed (either for WSSL holders or appointed companies) there is a route for Ofwat to make a reference to the CMA for the CMA to consider whether potential changes were in the public interest.

One approach would be to mirror the current arrangements in the licences. But this would not provide a level playing field across all licence holders because appointees would have greater powers to block changes than WSSLs if we wanted to keep the code consistent across appointees and WSSLs. The two processes would also need to be run entirely separately and independently – the agreement of most WSSLs would be separate to the agreement of all appointees. And we would need to consider whether such a process would be sufficiently expedient. Certainly, appointees would need to recognise that such a process would likely drive much more regular changes than has historically been the case with Instruments of Appointment.

An alternative approach would be to write a code modification procedure into the licence condition itself that aligned the rights of all parties to ensure a level playing field and better reflect the issues concerned, and therefore the parties able to raise and object to changes. This could be done either by creating a code panel (with different composition to the existing ICP) or simply through the drafting of the condition.

We also recognise that there is an important question of appeal rights. If changes to the code were treated as a change to the licence, there would already be to the possibility of a reference to the CMA built in but under other alternatives – for example, where Ofwat could simply amend the code on its own, these appeal mechanisms would be absent. We note that under these alternatives, we would not be able to introduce an appeal mechanism under our powers, as this would be a matter for Government. But we have no objections to some sensible and proportionate appeal arrangements. The Water Act 2014 includes powers for the Secretary of State to introduce regulations that will provide for Ofwat's decisions to amend or not amend designated codes to be appealable to the CMA.

4.2 Our proposed approach

Based on the feedback we have received and our consideration of the issues, we are exploring the possibility of a condition in both of the WSSL and the instrument of appointment that is consistent and establishes a single common framework for amendment to the code. We recognise that this is likely to require a change to the existing proposed WSSL condition and propose to address this in our forthcoming consultation on licence changes.

We will consider any proposal for change made by market participants but are open to views about whether changes from other parties, such as consumer groups, should also be permitted. As with the Market Arrangement Code and Wholesale–Retail Code final recommendations for code changes made by market participants or other relevant parties would be approved or rejected by Ofwat.

We propose that Ofwat will consult with all affected market participants and anyone else Ofwat considers appropriate on any proposed revisions to the code of practice in line with its statutory duties. Any such consultation will take account of the:

- complexity of the issue being considered;
- timetable for the modification; and
- potential impact on systems and retailers' ability to carry out their 'business as usual' activities (but, in absence of any other considerations, for example, urgency, a minimum 28 calendar day period will apply).

Ofwat may propose revisions on its own initiative, or if a request is made in writing to us by licensees or appointed companies. Again, Ofwat would consult on such proposals in the manner described above.

In certain circumstances, Ofwat shall support procedures that enable users to access a 'pre-modification' process to discuss and develop complex modifications, as well as collect and share any evidence with Ofwat. This may take the form of a stakeholder meeting followed by publication of relevant documents. Ofwat shall encourage industry debate and support in shaping solutions and facilitate alternative solutions to issues being developed to the same degree as an original solution.

A consultation will have a clear mechanism for responding, in particular contact information for queries regarding the consultation will be provided.

Following consultation responses, Ofwat would issue a final decision as soon as reasonably practical. In doing so, Ofwat shall set out in its decision:

- parties who raised the change proposal;
- reasons for the proposed changes;
- the scope and impact of the potential change, including consideration of potential risks;
- evaluation against Ofwat's statutory duties;
- any relevant evidence; and
- implementation timescales.

The implementation of changes would generally be immediate for changes that did not have an impact on company systems and processes. But where changes are more complex, they should consider the impacts on costs and systems and allow sufficient time for suppliers to update their systems.

Consultation questions

Q1 Do you agree with our proposed approach to the governance of the code of practice?

Q2 Do you have any views as to whether the code governance and modification should be included in the code or the licence/appointment?

Q3 Who should be able to raise changes to the code of practice?

5. Next steps

We welcome further comments and feedback on the draft code of practice published alongside this consultation. We hope that in providing this to companies and stakeholders now they will have a clear understanding of what the requirements will be once the new market opens.

5.1 Outstanding areas of work

There remain a small number of areas where we propose to take forward more work either to finalise the finer detail of the code of practice or more broadly to support effective customer protection arrangements in the sector. These areas include the following.

1. **Developing standard formats for:**

    a. contract terms and conditions for micro-business – we proposed taking forward work to develop a model contract template for micro-businesses. This would not be a regulatory requirement but may be a useful tool for retailers operating in the market; and
    b. TPI letter of authority for micro-businesses – one of our proposals included requiring instances where a TPI is acting on behalf of a customer to obtain a letter of authority from that customer to demonstrate that they are acting on their behalf and to provide certain information. We think that it would be sensible to develop a standard template in this regard to be used in conjunction with the code of practice (see section 6.4.2 in the draft Code) to reduce the burdens of this exercise and improve consistency of approach here. We have not yet developed this template.

2. **Supporting the sector's development of a TPI accreditation scheme and ADR arrangements.** We current have no plans to regulate TPIs directly (and indeed no powers to do so). We have proposed in the code of practice that retailers would be required to have an accessible and effective ADR scheme in place, but we are not prescribing the form of that scheme. Therefore, there is no specific activity that we must deliver in these areas, but we will take forward further work to understand and monitor the likely development of these arrangements in the new market and understand their effectiveness for customers. As mentioned above, we are minded to explore setting out some

requirements and criteria that any scheme needs to meet for a retailer to sign up to. We welcome stakeholder views on this.

3. **Developing monitoring arrangements for the new market.** In a number of instances, we recognise that we will need to monitor how the market is developing to understand if our protections are working, or if they need revising or removing entirely because they are unnecessary. We intend to take forward this work as part of a broader exercise to develop and understand the arrangements needed to monitor the effectiveness of the new market.

We plan to explore these areas in quarter 2 and quarter 3 of 2016-17.

5.2 Interactions with other elements of the market architecture

In developing our proposals, we have been mindful of interactions with other elements of the market architecture, including the Wholesale–Retail Code, the Market Arrangements Code, and the Retail Exit and Interim Supply arrangements. As they currently stand, our proposals have a number of interactions with these other elements of the architecture and we describe these below.

1. **Cooling-off period.** 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. Including this may require a change to the code and we are considering this with MOSL, but as we have noted earlier in the document, we expect that it should be possible to accommodate this cooling-off period by simply placing it ahead of the formal process of requesting a switch.

2. **Definition of micro-businesses.** Many of our protections focus on micro-businesses and we have proposed to define these businesses as those with fewer than ten employees. In general, the focusing of our customer protection arrangements has been designed not to have an impact on the settlement and other processes defined in the central IT systems that facilitate the operation of the codes and are currently being developed by MOSL. However, some of our proposals, including the one to limit back-billing to micro-businesses may mean that these customers will need to be defined in the code to ensure consistency with these arrangements. We will be discussing potential changes to the Wholesale–Retail Code with MOSL and the ICP as required.

3. **Rules around back-billing.** We note that the customer protection code of practice does not place obligations on wholesalers and so changes to the Wholesale–Retail Code are likely to be required to give effect to this proposal.

4. **Banning automatic roll-over for fixed-term contracts.** We have noted that our proposal to ban automatic roll-overs may not align with other elements of the market architecture including the draft exit regulations. We will explore with the UK Government if and how these proposals could be taken forward ensuring a coherent and consistent set of market arrangements.

We expect to have further discussions to explore these issues in more detail during the consultation period for this document.

5.3 Timescales

Based on the issues explained above we set out the key points in our overall timescales below:

Action	Date
Issue consultation document	17 March 2016
End of consultation period	15 April 2016
Issue conclusions and final code of practice	Late May 2016
Consequential code changes	Summer 2016
Soft consultation on changes to IoA to introduce code of practice	Early April 2016
Formal consultation on changes to IoA	June 2016
Implement changes to IoA	Summer 2016

Appendix 1: Summary of our final proposals

We presented the table below in our December consultation to summarise our proposals. We have updated the table to show where proposals have been ~~removed~~ or amended.

	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	General consultation feedback
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)**	**Green – generally agree Orange – mixed Red – generally disagree**
Proposal 1: All retailers to comply with a new code of practice.	✓	~~✓~~	✓	✓	
Proposal 2: Regulate the quality of information provided during sales and marketing activities, in relation to micro-businesses.	✓			If relevant	
Proposal 3: Retailers to provide certain basic information in a standard template format, to allow micro-businesses to compare different deals.	✓	~~(✓)~~	(✓)	If relevant	
Proposal 4: Retailers to take reasonable steps to make sure that any TPIs acting as agents on their behalf are aware of the provisions of the code of practice.	✓	~~✓~~	✓	✓	
Proposal 5: Standards of conduct for retailers in relation to their contracts with micro-businesses.	✓				

	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	General consultation feedback
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)**	**Green – generally agree Orange – mixed Red – generally disagree**
Proposal 6: Retailers to provide certain minimum information to micro-businesses	✓				
Proposal 7: 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.	✓	~~✓~~	✓	✓	
Proposal 8: Retailers to offer micro-business customers a cooling off period of at least seven calendar days.	✓				
Proposal 9: 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.	✓				
Proposal 10: 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.	✓	~~✓~~	✓	✓	
Proposal 11: 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	General consultation feedback
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)**	**Green – generally agree Orange – mixed Red – generally disagree**
Proposal 12: 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.	✓	~~✓~~	✓	✓	
Proposal 13: retailers to issue at least one accurate bill each year to ~~micro-business~~ all customers and, for metered micro-business customers, to take a meter reading at least ~~twice~~ once a year.	✓	✓	✓	✓	
Proposal 14: retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract.	✓			If relevant	
Proposal 15: retailers to base their final bill on the transfer read provided by the incoming retailer	✓	~~✓~~	✓	✓	
~~Proposal 16: back-billing only permitted in situations where customer has behaved inappropriately~~	✓	~~✓~~	✓	✓	
Proposal 17: 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.	✓			If relevant	

	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	General consultation feedback
Proposal	**Micro-businesses**	**~~All SMEs, including small businesses~~**	**All eligible non-household customers**	**All eligible non-household customers (ie, those using more than 50 Ml)**	**Green – generally agree Orange – mixed Red – generally disagree**
Proposal 18: require retailers have an effective complaint handling process and to join the ~~WATRS water redress scheme.~~	✓	~~✓~~	✓	✓	

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.

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