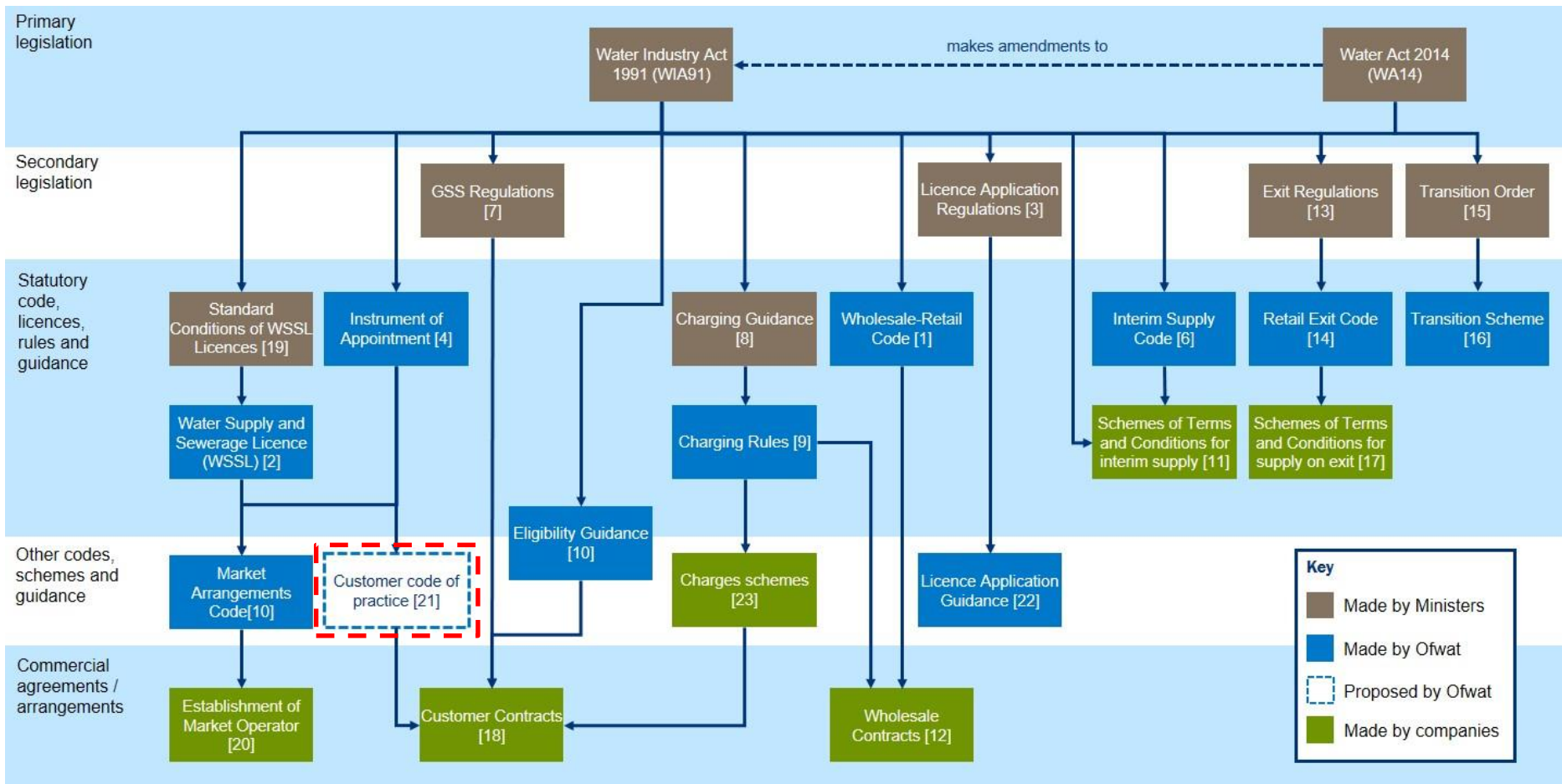


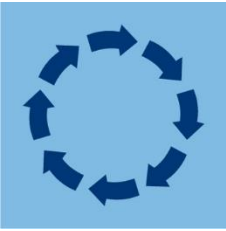
Workshop on customer protection in the retail
non-household market

Andrew Beaver, Rowaa Mahmoud and Alison Cullen
20 January 2016

Time	Item	Who
1 pm	Welcome and introduction and objectives	Ofwat
1.10	Scope and nature of the COP – presentation, group discussion and feedback <ul style="list-style-type: none"> • COP style: high-level principles vs detailed rulebook • COP scope: provisions apply to all vs smaller customers and in which form 	All
1.55	Overview of consultation responses – emerging consensus	Ofwat
2 pm	Overview of consultation responses: specific areas of mixed views– presentation, group discussion and feedback <ul style="list-style-type: none"> • TPIs • Cooling-off periods • Cancellation process: debt • Back-billing 	All
2.45	COP governance and monitoring	Ofwat
2.55	Next steps and closing remarks	Ofwat

RMO legal architecture





Next meeting: 16 February 16?

Consultation on final proposals and draft CPCOP: March

Consider responses, make necessary changes to the draft code and publish.



Continue our dialogue

Recap of proposals

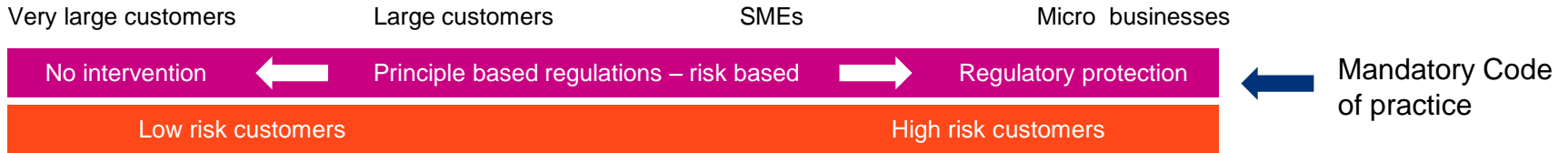
Share and discuss high-level messages from responses

Focus discussion on areas of mixed views

Share and discuss initial thinking on code principles, governance and monitoring.

Customer journey

Protecting customers in the non-household retail market



Focus areas

Customer journey

Policy proposals



No intervention

Principle based regulations – risk based

Regulatory protection

← Mandatory Code of practice

The most effective way to protect customers' interests in the market is to make that market work well, with high-levels of rivalry. We recognise the need to minimise regulatory intervention to support entry but to achieve this we consider that, based on experience elsewhere certain additional specific measures are likely to be required to protect customers....

...but there are different ways to implement consumer protection measures

1. Principles based versus rules based
2. Mandatory versus self-regulation

Generally we favour a principles based approach but one which is enforceable and which can deal with certain specific issues (which don't always easily lend themselves to a principles based approach).

Consultation feedback

- General agreement that a mandatory code of practice would help deliver best customer outcomes and that it should be set by the regulator....but small number of responses suggested that self-regulation would be better.
- General support of principle based approach...but small number of respondents suggesting code could be too prescriptive and several wanting to see specific issues addressed.
- Code should be clear, proportionate and not too complex or onerous.

Very large customers

Large customers

SMEs

Micro businesses

Low risk customers

High risk customers

In our December document we recognised that the customer protection issues were more relevant to the smallest customers and the very largest customers are generally at a low risk.

We therefore proposed a targeted risk-based and proportionate approach focussing our proposals on those customers.

Consultation feedback

- Some supported our targeted and proportionate approach suggesting that a one-size-fits-all approach would not be appropriate...but there was a view from others that segmentation of customers carried a cost and it would be better to apply a simple framework to all customers
- Some considered that these additional protections should just apply to micro-businesses
- Mixed views about defining customer segments - some recommended following approach from other utilities to define with others suggested using consumption data, employee data or both.



1. Should our proposed code of practise be made more principles based or is further prescription needed to provide clarity?
2. Would a self-regulatory or voluntary approach work better or does our code of practice need to be enforceable?
3. Should the proposed consumer protections apply to the different customer groups as set out in the consultation or would a single approach for all customers be more appropriate?
4. If we need to target protections at certain customer groups then how should we define those groups? Is there a definition that would provide a targeted approach but minimise cost to suppliers/barriers to entry?

Respondents **largely agreed** that some customer protection measures are needed in the form of a code of practice but there were some different views on the specific proposals.

Areas of consensus/commonality

- **Generally agree** to measures to ensure fair sales and marketing activities
- **Generally agree** that retailers should ensure they have a valid contract with their customer and should sign up to an ADR scheme as well as all retailers to have an effective **complaint handling process**
- Regulation should be **clear, simple and not too onerous**. Principles to customers should be clear, transparent and upfront
- Ofwat should **monitor** the switching process.

Areas of disagreement/debate

- **Mixed views** on cooling off periods, meter read frequency and retailer's role with relation to TPIs as well having a prescriptive billing format
- **Generally agree** about debt being a valid reason to block a switch but consumer groups don't want switches to be blocked **unnecessarily**
- **Strong views** about back-billing limit.

...we want to discuss 4 specific areas...

TPI's: proposals 4, 9 and 10

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.

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.

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.

Consultation feedback

Mixed views as to whether it should be the retailer's responsibility to ensure the TPI is aware of and understands the code of practice. Some tend to agree but need to know "how".

Mostly market participants agree for TPIs to sign up to a set of standards or 'accredited schemes'.

General agreement to get a *written* confirmation from TPIs to act on behalf of customer, consumer groups and charities were widely in agreement. Some though *written* is too onerous.

Group questions:

- 1. What would constitute "reasonable steps" in relation to TPIs?**
- 2. Should TPIs sign up to a set of standards or an accredited scheme? If so what should the form of that scheme be- industry/self regulation/ Voluntary?**
- 3. Should Ofwat prescribe a format for "letters of authority"?**

Cooling off: Proposal 8

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

Consultation feedback

Mixed response from water companies: some agreed this would be useful, others felt unnecessary and would make the switching process longer (consumer group shared this view).

Some suggested that the cooling off period could start in tandem with the switching process (send registration request on D1 of cooling off).

Others suggested 14 days rather than 7 calendar days.

Group questions:

- 1. Is a cooling off period necessary to protect customers? All vs smaller customers?**
- 2. Is it sensible for larger customers to “opt out”?**
- 3. If so what is an appropriate period and why?**
- 4. Could the cooling off window be built into the switching process sensibly?**

Switch blocking 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.

Consultation feedback

Nearly all suppliers felt that they should be allowed to block a switch based on debt.

Nearly all agreed that the reason for cancelling a switch should be communicated to the customers only one supplier was concerned about the admin costs.

Consumer groups and charities agreed, but wanted very tightly defined reasons for retailers to be able to block a switch and raised concerns over when debt is wrongly identified or when blocking is misused. Other respondents suggested a need to monitor switch blocking to ensure it is not misused.

Group questions:

- 1. What would constitute reasonable debt re-payment plan and “active communication with the customer” about the use of cancellation process?**
- 2. Should there be a process for dealing with dispute and what should it be?**
- 3. Do we need to monitor objection trends and if so how should we do this?**

Back billing: Proposal 16

We propose to use the Customer protection code of practice to prevent retailers from back-billing eligible non-household customers unless the customer has behaved inappropriately

Consultation feedback

Majority of water companies disagreed that they should be only allowed to back bill when a customer has behaved inappropriately and some queried the approach to rebates.

Customer groups generally agreed that back-billing should not be allowed unless the customer has behaved inappropriately.

General agreement to allowing a reasonable payment plan with a back-bill.

Some called for a prescriptive/defined payment plan to be put in place.

Group questions:

- 1. Should back-billing be permitted over a longer period given the customer data issues around market opening?**
- 2. Should rebates be similarly limited? What would be the best process for refunding customers after the switch?**
- 3. What circumstances would constitute “inappropriate customer behaviour”?**
- 4. How can we ensure consistency between wholesaler and retailer in relation to back-billing ?**

Code governance:

Industry (self regulation)

Independent industry board

Ofwat



In the consultation we said nothing about the governance of the code.

Generally we consider that the code should be enforced through a licence condition and governed by Ofwat rather than an industry code panel/some other governance arrangement.

- We propose to have a strong role in customer protection matters
- Existing code panel (ICP) may not have right membership
- New code panel feels disproportionate
- Important to ensure incentives are aligned.
- Legislative framework does not provide for appeal rights
- We will be thinking about code monitoring options.

Questions:

- 1. Any early views on the proposed governance of the code?**
- 2. Is there a more appropriate approach?**

Consultation Document Proposals - recap

Proposal	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 response consensus
	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 Customer Protection Code of Practice.	✓	✓	✓	✓	Green
Proposal 2: Regulate the quality of information provided during sales and marketing activities, in relation to micro-businesses.	✓			If applicable	Green
Proposal 3: Retailers to provide certain basic information in a standard template format, to allow micro-businesses to compare different deals.	✓	(✓)	(✓)	If applicable	Yellow
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.	✓	✓	✓	✓	Yellow
Proposal 5: Standards of conduct for retailers in relation to their contracts with micro-businesses.	✓				Yellow
Proposal 6: Retailers to provide certain minimum information to micro-businesses	✓				Yellow
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.	✓	✓	✓	✓	Yellow
Proposal 8: Retailers to offer micro-business customers a cooling off period of at least seven calendar days.	✓				Yellow
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.	✓				Green

Consultation Document Proposals - recap

	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 response consensus
Proposal	Micro-businesses	All SMEs, including small businesses	All eligible non-household customers	All eligible non-household customers (i.e., those using more than 50 MI)	Green – generally agree Orange – mixed Red – generally disagree
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.	✓	✓	✓	✓	Green
Proposal 11: Retailers to take all reasonable steps to ensure they have a valid contract with the customer before they request a switch.	✓	✓	✓	✓	Green
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.	✓	✓	✓	✓	Yellow
Proposal 13: retailers to issue at least one accurate bill each year to micro-business customers and, for metered micro-business customers, to take a meter reading at least twice a year.	✓			If applicable	Yellow
Proposal 14: retailers to issue a final bill to micro-businesses within six weeks of the customer's transfer or end of contract.	✓			If applicable	Green
Proposal 15: retailers to base their final bill on the transfer read provided by the incoming retailer	✓	✓	✓	✓	Yellow
Proposal 16: back-billing only permitted in situations where customer has behaved inappropriately	✓	✓	✓	✓	Red
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 applicable	Green
Proposal 18: require retailers have an effective complaint handling process and to join the WATRS water redress scheme.	✓	✓	✓	✓	Green



www.ofwat.gov.uk
[Twitter.com/Ofwat](https://twitter.com/Ofwat)

Workshop note

Wednesday 20 January 2015
Ofwat, 21 Bloomsbury Street, WC1B 3HF

RMO – Customer protection for non-HH market-stakeholder meeting

Attendees	
Name	Company
David Jones	Defra
Emma Morris	Thames Water
Karma Ockenden	Major Energy Users Council
Simon Bennett	Bristol Water
Colin Fraser	Yorkshire Water
Kulwinder Jonal	Market Operators Services Ltd
Hugh Laurie	Thames Water
James Mackenzie	CCWater
Andrew Poole	Federation of Small Businesses
Tom Sharples	Water Industry Commission Scotland
Zainab Mohammed	Market Operator Services Ltd
Mike Brindle	United Utilities
Matt Vaughan-Wilson	Money Advice Trust
Dylan Freeman	Southern Water
Gillian Ide	United Utilities
Apologies	
Ben Newby	Bristol Water
John Vinson	Water 2 Business
Harriet Towler	Severn Trent Services
Amy Leathard	Severn Trent Services
Lisa Ball	Affinity Water

Ofwat attendees

Andrew Beaver
Rowaa Mahmoud
Alex Whitmarsh
Alison Cullen
Sarah Bark

Objective of the meeting

The purpose of this workshop was to discuss our customer protection proposals and high level messages from consultation responses following the close of consultation '[Protecting Customers in the non-household retail market – a consultation](#)' on 11 January. The following document sets out the notes of the meeting. Throughout this document the Customer Protection Code of Practice will be referred to as 'the Code'.

Ofwat set out the objectives of the workshop and recapped on the legal framework for the retail market, showing where the customer protection code would sit within that. Ofwat outlined some next steps including highlighting the potential to have a further meeting on the 16th February to discuss an early draft customer protection code of practice, which attendees felt would be useful.

Section 1

Code of practice style

Ofwat recapped on proposals for the style of the code of practice, options were principles based versus rules based and mandatory versus self-regulation noting the benefits of each option. Ofwat emphasised the need to balance the promotion of competition to ensure that the market operates effectively, with high levels of rivalry to support the best outcomes for customers, with targeted regulatory intervention to protect customers- too little intervention and customers may not be protected, too much may result in a chilling effect on levels of rivalry reducing the benefits of the market for customers. In this context Ofwat expressed a preference for a principles based approach but one which is enforceable and can deal with specific issues. This was based on a need to minimise regulatory intervention to support entry into the market but with additional specific regulatory measures to be able to protect customers where things go wrong.

Code of practice scope

Ofwat recapped on proposals for the scope of the code of practice, setting out the importance of the targeted risk based approach to protect customers while ensuring intervention is there when it is needed.

The group then discussed in four breakout sessions a few questions:

Q1 – Should our proposed code of practice be made more principles based or is further prescription needed to provide clarity?

During discussion the following key points were made:

- There was general agreement that being too high level or purely principles based might leave room for subjectivity and be unclear to market participants and difficult to embed in their processes.
- It was suggested that with a principle based approach may make it harder to identify instances of non-compliance or enforce.
- There was broad agreement that the more prescriptive elements of the code were right and needed to be set out in this way, but that they should focus on a handful of key areas, e.g. contracts terms and conditions, switching and contracts roll-overs. It was suggested that the balance between prescriptive rule and high level principles seems appropriate in the consultation document. There was broad agreement to a hybrid model (principles and prescriptive rules) that should evolve over time as the market evolves.

Q2 – Would a self-regulatory or voluntary approach work better or does our code of practice need to be enforceable?

Most attendees thought it should be enforceable, with one attendee raising concerns about the potential compliance cost.

Attendees noted it is important for any enforcement to be proportionate. For example, would a single complaint or incident trigger an event or would it be repeated behavior of a more significant kind?

Q3 – Should the proposed customer protections apply to the different customer groups as set out in the consultation or would a single approach for all customers be more appropriate?

The group discussed whether the Code should apply to all customers with a targeted rules to specific customers as per the consultation document or whether the protection arrangements should be simplified to fewer groups of customers or indeed applied to all customers.

There were mixed views, some suggested that over 96% of businesses employed 10 people or less so queried whether it was proportionate to exclude the 4% who are not microbusinesses- a better approach may be to simply apply more limited protections to all customers. Others argued that the SME and micro-business distinction in the code was unhelpful- protections targeted to these groups should be consistent or indeed simply applied to micro-businesses.

Finally, some suggests that the approach could start out with the protection measures applying to all customers and to be reviewed after a few years. There was recognition that microbusinesses would have less buyer power but several attendees raised the importance of not making measures too onerous and queried whether there was a significant difference between the risks faced by micro-businesses and SMEs.

Q4 – If we need to target protections at certain customer groups then how should we define those groups? Is there a definition that would provide a targeted approach but minimise cost to suppliers/barriers to entry?

The group discussed how to identify the different customer segments. Several attendees noted the benefit of using information that is already in the market dataset to define these groups- this is information that companies have with some confidence, particularly consumption. Some attendees suggested using a combination of consumption and number of sites, size of bills, number of premises, number of meter reads and meter size. However, whilst this approach would be practical, it might not identify the most at-risk customer groups- for example there may be a relatively small business with high-water use and correspondingly a large business with a low water use. Some members of the group felt that the segmentation should have a simple approach by either making the segmentation narrow or applying it to all.

Most market participants felt the data used to classify the segments had to be readily available to market participants noting that employee data is not readily available and not all customers would be willing to share this information with the retailer. The group suggested that Ofwat consider using number of premises as a proxy however some attendees noted that there is no link to customer name in the data. The group

also noted data quality issues and impact on customer trust and engagement in the market.

Section 2

Consultation responses themes and high level messages

Ofwat gave an overview of **areas of broad agreement from consultation responses, key areas are as follows.**

- Agreement that regulation should be clear, simple and not too onerous.
- Agreement towards proposals to ensure fair sales and marketing activities.
- TPIs signing up to a set of standards or 'accreditation scheme' and retailers to request a written confirmation from TPIs confirming they are to act on behalf of the customer.
- Agreement to measures to ensure market participants have a valid contract with their customer.
- Market participants felt debt was a valid reason for blocking a switch. Consumer groups agreed but wanted to ensure that switches aren't blocked unnecessarily.
- The reason for blocking a switch should be communicated to the customer.
- General agreement to allowing a reasonable payment plan with a backbill.
- Market participants should have an effective complaint handling process and signing up to an ADR scheme.

Ofwat also highlighted key areas for concerns or mixed views.

- Mixed views on the cooling off period duration and scope, meter read frequency, the market participants' role with relation to independent TPI's and prescriptive billing formats.
- Back-billing limit, consistency with rebates and between rules for wholesalers and retailers.
- Mixed views as to whether it should be the retailers's responsibility to ensure the TPI is aware and understands the code. Some views that this could be only reasonable if the TPI is the retailer's agent.

Each group had a different topic and set of questions for discussion.

Group 1 – TPIs

Q1 – What would constitute “reasonable steps” in relation to TPIs?

The group discussed the difference of business models within which TPIs operate. Where the TPI is the retailer’s agent, the retailer could sign a contract with the TPI. However, the group felt that when the TPI was directly appointed by the customer, the retailer should not have responsibility over the TPI’s behaviour. The group also noted that the retailer in the latter business model could request a letter of authority or contact from the customer to ensure they were not mis-sold to and understand the contract terms and conditions.

Q2 – Should TPIs sign up to a set of standards or an accredited scheme? If so what should the form of that scheme be – industry/self-regulation/voluntary?

The group felt that this would be a good idea noting existing schemes in other sectors. It was broadly agreed that this should be voluntary and does not need to be ready before market opening given the absence of any evidence of TPI issues in the sector presently ahead of the opening of the market.

Q3 – Should Ofwat prescribe a format for “letters of authority”?

There were mixed views as to whether Ofwat should prescribe this. Some saw benefits in having a consistent format in place while others felt that this would be too restrictive/unnecessary regulation.

Group 2 – Cooling off

Q1 – Is a cooling off period necessary to protect customers? All vs smaller customers?

One attendee noted that research suggests customers would find a cooling off period useful and it should be applied to all customers. There were not particularly strong views but the group seemed in agreement that it would be beneficial to customers and could mitigate some of the risks of mis-selling or erroneous transfers. It was acknowledged that a cooling off period could be offered to smaller customers

as in the domestic energy market. It was also suggested that it should be something which is kept under review and could be removed as the market matures.

Q2 – Is it sensible for larger customers to “opt out” of the code?

It was suggested that this process could be misused and that this could lead to confusion. The general feeling was not to offer an option to opt out.

Q3 – If so what is an appropriate period and why?

It was discussed that a cooling off period could extend the switching period, which would make the process quite long. It was queried whether there were any ways to shorten other aspects of the switching process whilst still embedding the cooling off period into the overall timescale. The group agreed that a seven day period was suitable.

Q4 – Could the cooling off window be built into the switching process sensibly?

The group agreed that this needs to be built in in such a way that it does not allow for errors and overlap. The group also agreed that the cooling off period should ‘pause’ the switching process and retailers should not initiate the switching process until after the end of the cooling off period.

Group 3 – Switch blocking

Q1 – What would constitute reasonable debt re-payment plan and “active communication with the customer” about the use of cancellation process?

The group agreed it was important to inform the customer about reasons for blocking the switch. One attendee suggested that debt should be clearly defined and there should be a debt threshold for example in Scotland retailers can only block a switch if the outstanding debt was over 90 days. It was suggested that being indebted for one month would be an appropriate time threshold for allowing market participants to block a switch or could be based on a threshold of the value of the debt.

Q2 – Should there be a process for dealing with disputes and what should it be?

Disconnection was identified as an option for dealing with customers who do not pay their bills. One attendee suggested that high level principles could be used to set the process. One consumer group noted that CC Water should be involved to try to resolve issues before they get to the ADR stage.

Q3 – Do we need to monitor objection trends and if so how should we do this?

Attendees agreed that it would be sensible to monitor switching data and trends. It is important to consider that the number of cancellation (switch blocking) will be proportionate to the customer base. Some attendees suggested that Ofwat should also monitor average repayment rates as repayment plans should be appropriate and affordable. One attendee noted that best practices from other sectors should be a guidance principle. Another attendee suggested that there should be a standard monitoring request e.g. annual request for information coupled with companies' own assessments.

Group 4 – Back billing

Q1 – Should back-billing be permitted over a longer period given the customer data issues around market opening?

There was a recognition amongst participants that the preparation of data for the opening of the market could identify customers that were not previously being billed or indeed instances where customers had been overbilled and that there may be a need to manage this risk.

There was a wide range of views in relation to back-billing some companies considered that they should be able to go back 6 years- on the basis that the customer has been receiving a service and should have to pay for it. Others noted that they have internal policies only to back-bill to the start of the charging year. It was highlighted that sometimes it was not obvious to customers if they had been paying or not e.g. assuming it was being covered within their tenancy agreements. One consumer group noted that it was primarily the responsibility of companies to ensure bills and database were right in the first place. A point was made that the duration was not the important thing, but rather the repayment plan and that this was manageable.

Q2 – Should rebates be similarly limited? What would be the best process for refunding customers after the switch?

A point was made that consistency between back-billing and rebates seemed right. Some market participants seemed to be in agreement. However, consumer groups made the point that the companies should be being more responsible as they have the information and therefore should bear more of the risk.

Q3 – What circumstances would constitute “inappropriate customer behaviour”?

There was agreement that this could potentially be hard to have an exhaustive list of scenarios for. However, some examples were seen to be helpful and some noted that if the customer acted in bad faith e.g. deliberately avoided payment through tampering with the meter or preventing access to the meter for meter reading, they should be easily identified.

Q4 – How can we ensure consistency between wholesaler and retailer in relation to back-billing?

There were views that they could be addressed through Wholesale- Retail code, others suggested that this could be done through the code directly and that as long as it was underpinned by licence conditions for both appointees and Water and Wastewater Supply Licensees this would work. Finally it was suggested that this consistency could be built into charging rules.

Code governance and monitoring

Ofwat set out different options for code governance. One option is for the code to be industry led, other options included setting up an independent panel or for Ofwat to lead the development and management of the code. Ofwat noted that the preferred option is for the code to be Ofwat led. Ofwat asked for early views around this proposal. There was recognition that a code panel might not be the right approach/disproportionate to the code and that the existing panels for the Wholesale Retail Code and the Market Arrangements Code might not have the right constitution and membership- Ofwat should lead the code. Some attendees requested that we discuss ADR issues in more detail.

Ofwat also noted that they will think about code monitoring in a later stage in consultation with stakeholders.

Next steps

The group agreed it would be worthwhile to meet again on the 16th of February to discuss in more detail the policy intent in the draft code of practice.