

Protecting customers in the non-household retail market – decision document

About this document

This document summarises the feedback we received to our March consultation on our final proposals for customer protection in the retail market and the draft Customer Protection Code of Practice ('the code of practice').

The Water Act 2014 will allow all businesses, charities and public sector organisations to choose their supplier of water and wastewater retail services from April 2017. This will allow approximately 1.2 million organisations, to be able to shop around for their water and sewerage retailer.

In line with our [statutory duties](#), we must ensure that those new market arrangements provide real choice and benefits for customers. 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.

This work is also consistent with the UK Government's published competition plan 'A better deal: boosting competition to bring down bills for families and firms' states:

"The government will therefore ensure greater focus on the needs of small businesses through the Policy Statements it gives to Ofgem and Ofwat, which give guidance on their policy priorities. The government will ask the regulators to look in particular at giving small businesses further protections, for example, to protect them from mis-selling, ensure more transparent prices and to make switching easier."

The Welsh Government has taken a different policy position in relation to the extension of competition, preferring instead to rely on regulation to support the best price and service outcomes for customers. We have developed these proposals whilst being mindful of this position and the broader policy and guidance we receive from the Welsh Government.

Welsh customers who are eligible to change retailer (those who consume at least 50 ML a year) will benefit from those protections that aren't specific to micro-businesses - for example the limit on back billing, the requirement to issue at least one accurate

bill a year and the rules on third party intermediaries. Some retailers may choose to extend micro-business specific protections to all their customers, in which case eligible Welsh customers would receive the full protection of the code. Of course, if a Welsh customer is eligible to change retailer and is also a micro-business it will receive the full protections regardless. This ensures Welsh customers are not disadvantaged compared to those wholly or mainly in England.

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1. Background

On 17 March 2016 we published '[Protecting customers in the non-household retail market – a consultation on final proposals and a draft customer protection Code of Practice](#)' (the 'March consultation'), which included our final proposals following feedback from our December consultation and subsequent stakeholder workshops. We also published the Code of Practice for consultation. This included specific additional customer protection measures that we thought would be appropriate in the expanded non-household retail market after April 2017. The consultations examined the experiences of other regulated utility sectors, and included a proposal to introduce a mandatory Code of Practice for all retailers through a licence condition on all Water Supply and Sewerage Licensees (WSSs) and instrument of appointment condition on all appointed companies. They also included 17 customer protection proposals that we proposed to include in the Code of Practice.

As part of the preparations for the retail market, we need to make some changes to the regulatory instruments of appointed companies (IoAs). In a separate [consultation](#) we are proposing to insert a new condition in all IoAs require appointees to comply with the Code of Practice. A similar condition is already included in the WSS standard conditions. We have a choice of legal tools to make these changes: either using the modification process under section 13 of the WIA91; or using section 55 of the WA14, which allows Ofwat to modify the conditions of an appointment and/or the conditions of a licence under Chapter 1A of Part 2 of the WIA91 where we consider it necessary or expedient to do so in consequence of provision made by or under Part 1 of WA14 (the provisions for the retail market).

In light of the responses we received to our March consultation and the extensive stakeholder engagement undertaken prior to and after that, this document sets out our final Code of Practice and explains any further changes. We consider that our final Code of Practice strikes the right balance between upholding the key protections for customers while not introducing unnecessary burdens on retailers which could be seen as a barrier to entry and expansion, thereby creating a chilling effect on levels of choice in the market, and potentially reducing its effectiveness for customers. We are therefore not making major changes to the Code of Practice following the March consultation. See table 1 for more details.

Our final Code of Practice recognises, 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 fewer resources to engage with the market.

Therefore, most of our protections 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 the CMA's provisional decision on remedies report and those provisional remedies in developing our March proposals.

Figure 1 Protecting customers in the business retail market

2. Summary of responses to March consultation

We received 19 responses, including from appointed companies, existing Water Supply Licensees (WSL's), potential new entrants, complaint handling organisations and consumer representatives.

Table 1 below summarises the feedback from our consultation on the Code of Practice and our responses to that feedback.

Table 1: Key topics and summary of feedback

Focus area	Summary of feedback	Final position
Regulatory approach	<p>General approach: Many respondents welcomed the direction of travel and the ongoing engagement with Ofwat. There was a positive acknowledgment of the changes made to the original proposals following December consultation as well as the January and February workshops.</p> <p>Micro-businesses : focus and definition: There was a general acknowledgement of the amended proposal to offer additional protection for micro-business customers.</p> <p>Some respondents expressed concern about their ability to identify a micro-business. Consumption was again suggested as an alternative proxy, or in addition to the basic definition.</p> <p>Some respondents asked for clarification as to what would happen if a non-household customer changed its number of employees during a contract and whether they will lose their protection at any point during the contract term.</p> <p>Interdependences with Wholesale-Retail Code (WRC): Some respondents highlighted specific areas of the Code of Practice where they felt it would be useful if there was an equivalent signpost in the complementary requirements in the Wholesale-Retail Code, to remind retailers of their obligations to ensure a seamless switching process. These include the cooling off window, cancellation requests and erroneous transfers.</p>	<p>Having considered stakeholders' feedback, we maintain the requirement on retailers to define a Micro-business using employee count. We considered carefully whether protections should be targeted on customers below a certain consumption level, but shared the concerns of some consumer groups that this would not target our proposals most effectively as consumption is 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.</p> <p>New drafting: In the final Code of Practice, we have added a clarification that the status of a non-household customer does not change during the period of the contract on the grounds of changes in their employee count– i.e. if a customer is a micro-business when they sign contract, they remain a micro-business until the end of the contract. This will help ensure consistency and clarity for both parties and reduce unnecessary burdens on retailers to identify any changes during the contract term. As set out in section 1.1 in the Code of Practice.</p> <p>We are working with market participants through the interim Code Panel (ICP) to introduce signposting into the Wholesale-Retail Code where it would be relevant and helpful. It is important to note that all of the relevant codes need to be read in conjunction, not isolation.</p>
Sales and marketing	<p>Provision of information: There was overall support for our proposal on the quality of information provided during sales and marketing activities.</p> <p>TPI (third party intermediary):</p>	<p>We maintain that this is an important element of customer protection particularly when it is the first interaction the customer would have with the switching process.</p>

Focus area	Summary of feedback	Final position
	<p>Respondents agreed that retailers should take reasonable steps to ensure third party intermediaries are familiar with the obligations in the Code of Practice.</p> <p>The majority of respondents continued to support a voluntary TPI code of practice. One respondent noted that the current approach for voluntary arrangements did not go far enough.</p> <p>TPI letter of authority:</p> <p>One respondent was unclear how the letter of authority would be enforced if Ofwat does not regulate TPIs directly. Another respondent thought the introduction of a sector led accreditation scheme could be a good compromise in this area to avoid an uncontrolled element of the supply chain.</p>	<p>As set out in our December document, we do not have powers to regulate TPIs and this is a matter for Government. We propose to keep this area under review after the market opens.</p> <p>We set out in the next steps section how we will take this area of work forward. In the March consultation, we noted that it would be useful to develop a standard template for micro-businesses in this regard to be used in conjunction with the Code of Practice to reduce the burdens of this exercise and improve consistency of approach here, and welcomed suggestions and examples. We did not receive any comments and so decided to amend the Code of Practice itself rather than prescribing a separate template as such that may place additional burdens on retailers or imposing particular formats on commercial relationships. We have therefore added the word “in writing” as set out in section 6.1.1 in the code of practice.</p>
<p>Contracts and information</p>	<p>Customer information:</p> <p>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.</p> <p>Some respondents agreed with the information to be provided on customers’ bills, while others thought this proposal was too prescriptive or were concerned this might result in information overload for customers.</p> <p>Banning automatic contract roll overs :</p> <p>One respondent suggested that extending the end of contract notice period from 30 days to 60 would benefit smaller customers.</p> <p>Cooling off period:</p> <p>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 in practice.</p>	<p>As the minimum requirement is for only one bill a year, we are satisfied that this would not create undue complexity for customers.</p> <p>We have not extended the 30 day notice period as there is currently no clear evidence that this is detrimental to customers, or that extending it to 60 days would be a better option. We will however keep this under review.</p> <p>New drafting: We have clarified that written consent for continuation of a contract must occur in the 30 day period between the retailer notifying the contract is due to expire, and the contract actually expiring. This consent is not to be agreed at the start of the contract. . As set out in section 7.3 in the Code of Practice.</p> <p>The cooling off period should start on the day after the day on which the contract was signed. We have considered the interactions with the switching process set out in WRC and the cooling-off period can be accommodated by not initiating the switching process before the period has lapsed. We have discussed potential signposting to WRC documents with the ICP.</p>

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	<p>Customer information format: written vs electronic :</p> <p>One respondent suggested that other electronic methods of communication be allowed as well as email, such as online messages and notifications via a website.</p> <p>There was general support for the ban on rollovers, but some respondents were unclear on how this would work in practice, particularly if a customer failed to respond to the 30 day notice period.</p>	<p>New drafting: We have clarified the different possible scenarios that we would expect retailers to detail in its renewal notice to a customer so that the customer is clear about the consequences if it chose not to respond to the renewal notice. . As set out in section 7.1.3 in the code of practice.</p> <p>Different scenarios at the end of a fixed term contract:</p> <ol style="list-style-type: none"> 1. Customer acts on renewal notice and: <ol style="list-style-type: none"> a. Gives written consent to renew the contract for a maximum period of one year b. Switches to another retailer <ul style="list-style-type: none"> • • 2. Customer does not act on the renewal notice <ol style="list-style-type: none"> a. In an exit area: the customer would be moved onto a Scheme of Terms and Conditions with the same retailer b. In a non-exit area: the retailer can offer its standard or default Terms and Conditions of Supply <p>Statutory provisions (whether in the WIA91 or the proposed Exit Regulations) will ensure that customers will have access to a retailer. We plan to amend the Retail Exit Code to ensure there is a coherent and consistent set of market arrangements in relation to offering customers schemes of terms and conditions following a contract expiry.</p> <p>New drafting: We have added the word “in writing” to section 6.1.1. This is to ensure customers have terms and conditions in writing which helps us achieve our proposal 3 in March consultation. As set out above.</p>

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Switching process	<p>Transfer read: We received only a small number of comments on our proposals on the switching process. There was a request for clarification around aligning the final meter reading process with the process set out in the Wholesale-Retail code.</p> <p>Definition of outstanding debt: A few respondents queried whether the approach to outstanding debt was inconsistent with the Wholesale-Retail code.</p> <p>Other issues: One respondent noted that some clarification was needed on the switching process for residential properties under development.</p>	<p>Having considered comments received and the discussion at the May ICP meeting, we decided to delete the clause on final transfer reads As set out in section 9.2.1 in the code of practice, ' as we believe the transfer read process is set out in detail in the market codes. It is important to note that the transfer meter read process should support timely and accurate billing and customers should not suffer any detriment (of any magnitude) from double-billing. We expect all Licensed Providers to bill their customers for the period for which they are registered for that non-household customer's SPID's, i.e. on and from the registration start date and up to and including the registration end date.</p> <p>Retailers obligations on outstanding debt are now covered in the general provision of information requirements. For the avoidance of doubt, retailers are not expected to allow an extra 90 days when objecting to a transfer request on the grounds of outstanding debt –this is the same window in both instances as set out in Market terms- part I.</p> <p>We will address the comment on household premises in our supplementary guidance on eligibility.</p>
Billing, back-billing and data quality issues	<p>Meter reading frequency: Respondents were pleased to note that some prescriptive elements of the proposed code have been removed, including the mandatory requirement for two meter readings a year.</p> <p>Back billing: There was support for our revised proposals to limit back-billing, particularly amongst consumer representatives, some of whom suggested it needed to be extended to all customers – respondents noted that this is an area where all customers would benefit from the protection and would aid consistency between retailers and wholesalers as well as within the retailer's customer base. Some respondents added that applying this rule to all customers would incentivise retailers to get their data right.</p>	<p>We have not changed our approach to back-billing for customers who behave 'inappropriately', for the reasons set out in our March consultation.</p> <p>New Drafting: We agree that the back-billing requirement should apply to all customers, as suggested by the majority of respondents to the March consultation and therefore decided to expand this rule to all customers - As set out in section 9.3.1 in the code of practice.</p> <p>New Drafting: In response to concerns that there may be a misalignment between our proposed back-billing limit and timeline for settlement run set out in the WRC, we have removed reference to the "previous financial year" and added "for any period for which Final Settlement Report has been provided by the Market Operator". This will make the limit 16 months which is consistent with the settlement process set out by market operator. As set out in section 9.3.1 in the code of practice.</p>

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	<p>One respondent suggested that back-billing timescales should be aligned with the wholesale-retail settlement process and was concerned that the proposed back-billing limit in the draft Code of Practice may leave some retailers financially exposed. At the May ICP meetings, attendees considered that the rule should cover wholesalers as well and therefore agreed that an amendment to WRC may be necessary.</p>	<p>Furthermore, we are working with the ICP to change the WRC to ensure wholesalers also comply with the back-billing limit. This may require a change to our wholesale charging rules and we are giving further consideration to this.</p> <p>We are currently consulting on the licences changes necessary to ensure retailers need to comply with the Code of Practice, including back billing. Once the consultation is closed we will consider the most appropriate route.</p>
<p>Complaint handling and dispute resolution</p>	<p>Complaint process definition:</p> <p>Most respondents were content with our proposals in this area and welcomed the change to the December proposals.</p> <p>ADR:</p> <p>There was agreement that the Code of Practice should not mandate a specific Alternative Dispute Resolution (ADR) scheme. Two respondents suggested a clearer wording in a couple of places for example, how the use of the word ‘investigate’ could guide retailers in a certain direction</p> <p>Role of CCWater:</p> <p>One respondent noted that CCWater, as the statutory consumer representative body, should be specifically mentioned in this section in the Code of Practice.</p>	<p>New Drafting: We have removed the word ‘investigate’ from the definition of a redress scheme to avoid limiting the number of organisations that might be suitable to carry out the work. As set out in section 1.1 in the Code of Practice.</p> <p>We are considering issuing non-binding guidance on ADR schemes to help guide retailers in their choice of what may be a suitable scheme and set our expectations in this area. This includes ensuring retailers choose the scheme that is right for their customers.</p> <p>The Code of Practice refers to ‘the Council’ which is the statutory term for the Consumer Council for Water (CCWater), and ensures the Code of Practice remains generic. This does not diminish the importance of CCWater as a key stakeholder and its current central role in complaint handling, but has been included in this way to align with the Water Industry Act 1991. We continue to support CCWater’s guidance on complaint handling, but as this is not specifically for the non-household market and is therefore not mentioned in the Code of Practice.</p>
<p>Code governance</p>	<p>Code vs Licence:</p> <p>The responses we received to the consultation did not point to a strong preference either way on whether specific provisions on code governance should be included in the water supply and sewerage licence and Instrument of Appointment (IoA), or in the Code of Practice itself. Out of 19</p>	<p>We agree that the governance arrangements should be included in the Code of Practice itself. This will mean that changes can be managed and implemented most efficiently.</p> <p>As explained in the Introduction, to protect customers appropriately in the market, we propose to insert a new condition in the IoAs requiring appointed companies to comply with the Code of Practice. Having</p>

Focus area	Summary of feedback	Final position
	<p>responses received, 5 appointed companies stated that the code governance arrangements should be set out in the Code of Practice rather than in a condition in the IoA and WSSL; one appointed company and CCWater stated a preference for the code governance arrangements to be included in a condition in the IoA and WSSL; 6 respondents stated they had no preference either way; and the remaining 5 responses did not include any comments on this point.</p> <p>Appeal mechanism: Some respondents did argue for the need for an appeal mechanism to help strengthen the legitimacy of the overall governance.</p>	<p>considered the responses to our consultation on the Code of Practice, although there does not appear to be a strong preference, there seems to be some support for including the code governance provisions in the Code of Practice, rather than the IoA. We agree that this ensures any changes to the governance of the Code of Practice do not require a change to the IoA, and that the Code of Practice itself is a self-contained document. So we propose to include a condition in the IoA that is substantively identical to the condition currently included in the WSSL standard conditions, simply amending 'licensee' to 'appointee'. The condition would require all appointees to comply with the obligations of the Code of Practice, and would state that the process for modifying the Code of Practice would be set out in the Code of Practice.</p> <p>We are considering if it would be helpful for change requests to be made in a standard format, possibly through the use of a standard form.</p> <p>Our understanding is that Defra are only proposing to apply an appeal mechanism under appeal regulations (due to be drafted over the summer) to the WRC, and that they do not intend to extend this to the CPCoP.</p>

3. Next steps

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 are set out below.

- 1. Developing standard formats for TPI letter of authority for micro-businesses:** where a TPI is acting on behalf of a customer the Code of Practice requires retailers to obtain a letter of authority from that customer confirming that a TPI is acting on its behalf and setting out the scope of the authority of that TPI. We consider that this is an important step for all non-household customers, and would be good practice. This will help the TPIs to demonstrate that they are acting on behalf of that customers to allow the retailers to provide them with certain information. In our March consultation, we said that it would be useful 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 Code of practice) to reduce the burdens of this exercise and improve consistency of approach here we have attached to this document our proposed we welcome stakeholders' views on this template before we designate it as the template under section 6.4.2 of the Code of Practice.. We are not proposing to amend the code itself but welcome further comments on the template letter of authority.
- 2. Supporting the development of a TPI voluntary code of practice:** We currently have no evidence that we need to regulate TPIs directly (and indeed no powers to do so) but if evidence arises after the market opens that voluntary arrangements are not working in the best interest of customers, we may seek additional powers from the UK government or use our existing regulatory tools to continue to ensure customers are protected. We plan to hold a stakeholder event later this year to discuss and develop the voluntary TPI code in practice. If you want to be added to the mailing list, please get in touch.
- 3. ADR arrangements** we require in the code of practice that retailers have an accessible and effective ADR scheme in place, but we are not prescribing the detailed form of that scheme. We will monitor the development of these schemes in the new market in order to understand their effectiveness for customers. We are considering setting out some guidance on criteria that each scheme should meet similar to those in the energy sector and help retailers comply with this requirement. We will update on this in Q4 this year.

- 4. 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 this area in Q4 this year.
- 5. Continuing to ensure complementary codes reflect the requirements of the Customer Protection Code of Practice.** We will continue to work with all parties, including MOSL, Policy group and the ICP, to ensure consistency across all the relevant codes.
- 6. Implementation of the code of practice:** We expect that the code of practice will be given legal force through a condition in licences and instruments of appointment ([subject to consultation](#)). Suppliers operating in the market, either as appointed companies or as licensees (holding a WSSL), would be required to follow the code of practice. The WSSL standard conditions already include a condition to this effect. We propose to insert a similar condition into the instruments of appointment, and subject to consultation, plan to implement the changes in August 2016.
- 7. Amendment of the Code of Practice:** Any amendment to the final code of practice published on 19 May 2016 will be subject to the code governance and change management arrangement set out in March document.
- 8. Monitoring compliance with the Code of Practice:** We intend to take forward work to monitor compliance with the Code of Practice. We think that reliance on principles and our proposed risk-based approach would give retailers the space to explore and innovate, and should help lighten the burden on those retailers which effectively embed the principles within their business. As part of this work, we will explore in more detail how we propose to monitor compliance with the code, in particular in relations to the code principles without placing undue costs on industry and the regulator.

If you have any questions about the contents of this document, please email Rowaa Mahmoud at customerprotection@ofwat.gsi.gov.uk or call Rowaa on 0121 644 7503.

Appendix 1: Summary of our final decisions

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

Proposal	Customers who use the supply system or sewerage system of appointed companies wholly or mainly in England		Customers who use the supply system of appointed companies wholly or mainly in Wales
	Micro-businesses	All eligible businesses, charities and public sector organisations	All eligible businesses, charities and public sector organisations, (i.e., those using more than 50 MI)
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, in writing 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.	✓		If relevant
Proposal 6: Retailers to provide certain minimum information to micro-businesses	✓		If relevant
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 businesses, charities and public sector organisations, bills or statement of accounts.	✓	✓	✓

Proposal	Customers who use the supply system or sewerage system of appointed companies wholly or mainly in England		Customers who use the supply system of appointed companies wholly or mainly in Wales
	Micro-businesses	All eligible businesses, charities and public sector organisations	All eligible businesses, charities and public sector organisations, (i.e., those using more than 50 MI)
Proposal 8: Retailers to offer micro-business customers a cooling off period of at least seven calendar days.	✓		If relevant
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.	✓		If relevant
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.	✓	✓	✓
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 all customers and, for metered micro-business customers, to take a meter reading at least 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	Customers who use the supply system or sewerage system of appointed companies wholly or mainly in England		Customers who use the supply system of appointed companies wholly or mainly in Wales
	Micro-businesses	All eligible businesses, charities and public sector organisations	All eligible businesses, charities and public sector organisations, (i.e., those using more than 50 MI)
Proposal 15: Retailers to base their final bill on the transfer read provided by the incoming retailer	✓	✓	✓
Proposal 16: Retailers shall not bill or invoice micro-business , for or recover charges in respect of water supplied or sewerage services provided to Micro-business before the start of the previous financial year for any period for which Final Settlement Report has been provided by the Market Operator	✓	✓	✓
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
Proposal 18: Require retailers have an effective complaint handling process and to join an ADR scheme in line with criteria /guidance published by Ofwat.	✓	✓	✓

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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