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Trust in water

Customer Protection Code of Practice for non-household retailers – draft for consultation

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1. Definitions and interpretation

1.1 In this code, [unless the context otherwise requires]:

Term	Definition
1991 Act	means the Water Industry Act 1991;
2014 Act	means the Water Act 2014;
Appointment	means the instrument of appointment granted to a relevant undertaker under section 6 of the 1991 Act;
Business day	the period of 08:00 to 18:00 hours on any day other than a Saturday or Sunday, or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;
CCWater	means the Consumer Council for Water established under Section 27A of the 1991 Act;
Cancellation	has the meaning given in the Wholesale–Retail Code;
Cancellation Notice	means a notice to cancel Terms and Conditions of Supply issued by a Micro-business pursuant to Section 6.2;
Renewal notice	means a notice to renew Terms and Conditions of Supply issued by a Micro-business pursuant to Section 7.2.3;
Complaints Handling Process	means a procedure which sets out how a complaint from a Non-Household Customer can be made to, handled and progressed by a Retailer;
Customer Protection Code Change Proposal	means a proposal in respect of a change to this code, made in accordance with Section 5.1;
Delivery hours	means 09:00 to 17:00 on a day which is not a Saturday or Sunday or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;
Eligibility Guidance	has the meaning given in the Wholesale–Retail Code;
Eligible Premises	has the meaning given in the Wholesale–Retail Code;
Exit Regulations	means any regulations made under section 42 of the 2014 Act from time to time;
Financial Year	means a year commencing on 1 April;
Incoming Retailer	has the meaning given in the Wholesale–Retail Code;
Information Template	means the template which includes: <ul style="list-style-type: none"> (i) the Non-Household Customer’s SPID(s); (ii) the tariff and details of how the bill has been calculated; (iii) whether the Terms and Conditions of Supply are pursuant to a Scheme of Terms and Conditions or the statutory duties of a relevant undertaker; (iv) any expiry date of the applicable Terms and Conditions of Supply; (v) ways to pay any outstanding debt;

	<ul style="list-style-type: none"> (vi) details of the relevant Retailer’s complaints procedure; (vii) contact details for the relevant Retailer; (viii) other useful third party contact details, including the Authority and CCWater;
Licence	means a Water Supply Licence or a Sewerage Licence;
Licensee	means the holder of a Licence;
Material Terms	means the provisions of any Terms and Conditions of Supply as set out in section 7;
Micro-business	means a Non-Household Customer where the number of employees is less than ten (10);
Non-Household Customer	means a person who may be identified as the customer of a Retailer for any Eligible Premises in light of any relevant Eligibility Guidance;
Outgoing Retailer	has the meaning given in the Wholesale–Retail Code;
Reasonable Repayment Plan for Back bill	<p>means a process for repayment of a Back-bill which meets the following criteria pursuant to section 9.3:</p> <ul style="list-style-type: none"> (a) it does not incur interest on the amount due; (b) offer the relevant Non-Household Customer time to pay that amount by agreed instalments, over a period nominated by the Non-Household Customer being no longer than: <ul style="list-style-type: none"> (i) the period during which the debt accrued, if it accrued over a period of less than 12 months; or (ii) 12 months, in any other case;
Reasonable Repayment Plan for Outstanding debt	<p>means a process for repayment of an Outstanding Debt which meets the following criteria pursuant to section 8.2.2:</p> <p>Offer the relevant Non-Household Customer time to pay that amount by agreed instalments, over a period nominated by the Non-Household Customer being no longer than:</p> <ul style="list-style-type: none"> (i) the period during which the debt accrued, if it accrued over a period of less than 12 months; or (ii) 12 months, in any other case;
Redress Scheme	means a scheme under which a complaint from a Non-Household Customer can be made to and investigated and determined by an independent person;
Retailer	<p>means either:</p> <ul style="list-style-type: none"> (i) a relevant undertaker, unless they hold their Appointment in relation to a retail exit area; or (ii) a Licensee;
Scheme of Terms and Conditions	<p>means one or all of the following (as the context requires):</p> <ul style="list-style-type: none"> (i) a scheme containing terms and conditions which, in the absence of agreed terms and conditions are to apply to a supply of water and/or provision of sewerage services which is required to be made by a Licensee pursuant to Exit Regulations; (ii) a scheme containing terms and conditions which, in the absence of agreed terms and conditions are to apply to a supply of water which is required to be made by a Licensee pursuant to section 63AE of the 1991 Act; and /or (iii) a scheme containing terms and conditions which, in the absence of agreed terms and conditions are to apply to a supply of water and/or provision of sewerage services which is required to be made by a Licensee pursuant to section 110N of the 1991 Act;

Supply Point Identifier or SPID	has the meaning given in the Wholesale–Retail Code;
Terms and Conditions of Supply	means the terms and conditions on which a supply of water or sewerage services are provided or are to be provided by a Retailer pursuant to: (i) an agreement between the Retailer and a Non-Household Customer, including a special agreement; (ii) a Scheme of Terms and Conditions; or (iii) the statutory duties of a relevant undertaker;
Transfer	has the meaning given in the Wholesale–Retail Code;
Transfer Registration Application	has the meaning given in the Wholesale–Retail Code;
Transfer Read	has the meaning given in the Wholesale–Retail Code;
Wholesale–Retail Code	means the code of that name issued by the Authority under sections 66DA and 117F of the 1991 Act, as amended from time to time;
Outstanding Debt	has the meaning giving in the Wholesale–Retail Code.

1.2 In this code, unless the context otherwise requires:

- 1.2.1 references to ‘this code’ are to this Customer Protection Code of Practice;
- 1.2.2 references to ‘Sections’ are to sections of this code unless otherwise expressly stated;
- 1.2.3 references to a Retailer will refer to all Retailers, unless otherwise specified;
- 1.2.4 words imparting a gender include every gender and references to the singular include the plural and vice versa;
- 1.2.5 words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;
- 1.2.6 save as otherwise expressly provided references to time are to local time;
- 1.2.7 references to ‘writing’ or ‘written’ shall include email;
- 1.2.8 references to ‘day’ and ‘calendar day’ mean the same as one another;

1.2.9 references to the Customer Protection Code of Practice or any other document are to this Customer Protection Code of Practice or that document as in force for the time being and as amended, supplemented, varied, modified, renewed, replaced or extended from time to time in accordance with the requirements of this Customer Protection Code of Practice or that document (as the case may be);

1.2.10 a reference to any body is:

- (a) if that body (statutory or otherwise) is replaced by another organisation, deemed to refer to that replacement organisation; and
- (b) if that body (statutory or otherwise) ceases to exist, deemed to refer to that organisation which most substantially serves the same purposes as the original body;

1.2.11 a reference to a statute or statutory provision shall, save as otherwise expressly provided, be construed as including:

- (a) a reference to any orders, regulations and subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under the statute or statutory provision whether before or after the effective date; and
- (b) a reference to that statute, statutory provision or subordinate legislation as in force at the effective date and as from time to time modified or consolidated, superseded, re-enacted or replaced (whether with or without modification) after the effective date;

1.2.12 references to a person shall, except where the context requires otherwise, include its successors in title and permitted assignees;

1.2.13 a reference to a particular condition of a Licence and/or Appointment shall be construed at any particular time as including a reference to any modification of that condition in force at that time;

1.2.14 any words or expressions used in the 1991 Act or the 2014 Act shall, unless the contrary intention appears, have the same meaning when used in this code;

1.2.15 headings and the contents table in this code are for convenience only and do not affect its interpretation;

1.2.16 the words ‘other’, ‘includes’, ‘including’ and ‘for example’ do not limit the generality of any preceding words, and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible; and

1.2.17 the words ‘for the time being’ mean at the relevant time now or in the future.

2. Purpose of this Customer Protection Code of Practice and code principles

- 2.1 This is the Customer Protection Code of Practice issued by the Authority pursuant to standard condition B2 of the Licence and [condition xxx of the Appointment]. This code should be read in conjunction with the relevant provisions of the Wholesale–Retail Code and the Exit Regulations.
- 2.2 The purpose of this code is to place obligations on Retailers in relation to the following five areas of market activity in order to protect Non-Household Customers to further the Code Principles:
- 2.2.1 sales and marketing;
 - 2.2.2 the provision of information to Non-Household Customers;
 - 2.2.3 the Transfer of Non-Household Customers;
 - 2.2.4 billing; and
 - 2.2.5 complaint handling and dispute resolution.

3. Effective date of this code

3.1 This code will take effect from 3 April 2017 notwithstanding its date of issue.

4. General principles

- 4.1 All Retailers shall comply with the following principles when dealing with Non-Household Customers:
- 4.1.1 Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business;
 - 4.1.2 Communication with Non-Household Customers shall be in plain and clear language;
 - 4.1.3 Retailers shall ensure they provide appropriate and timely information to Non-Household Customers to enable them to make informed choices;
 - 4.1.4 Any information provided to Non-Household Customers shall be complete, accurate and not misleading;
 - 4.1.5 Retailers shall respond to Non-Household Customers in an appropriate and timely manner; and
 - 4.1.6 Customer service arrangements and processes shall be accessible to and effective for Non-Household Customers.

5. Code governance arrangements and modification

5.1 Who may make a Customer Protection Code Change Proposal?

5.1.1 The Authority may propose a change to this Code at any time by consulting with each affected Retailer and any other person the Authority considers appropriate. Any such consultation shall contain the same information as a Customer Protection Code Change Proposal (see 5.1.2 below for details).

5.1.2 Where any Retailer or any other person the Authority considers appropriate wishes to propose a change to this Code, such party shall submit a Customer Protection Code Change Proposal. A Customer Protection Code Change Proposal should contain the following information:

- (a) the name of the person or persons proposing the change;
- (b) a description (in reasonable but not excessive detail) of the enhancement, issue or defect which it seeks to address;
- (c) a description (in reasonable but not excessive detail) of the Customer Protection Code Change Proposal and of its nature and purpose, including confirmation of how the Customer Protection Code Change Proposal is consistent with the Code Principles;
- (d) whether the Customer Protection Code Change Proposal is considered urgent and, if so, why; and
- (e) a description of any consultation carried out [or supporting evidence gathered] in advance of submitting the Customer Protection Code Change Proposal.

5.2 What happens when a Customer Protection Code Change Proposal is received by the Authority or the Authority consults on its own proposed changes?

5.2.1 The Authority will consider responses to the consultation under Section 5.1.2 or Section 5.2.2. The Authority will consider and evaluate each Customer Protection Code Change Proposal to decide whether:

- (a) it agrees with the Customer Protection Code Change Proposal;
- (b) it does not agree with the Customer Protection Code Change Proposal;
- (c) to propose amendments to the Customer Protection Code Change Proposal, or
- (d) to seek further information from Retailers, CCWater, experts or other relevant persons, conduct research or commission reports before making a decision,

in each case having regard to whether or not its decision is consistent with and its wider statutory duties.

5.2.2 The Authority shall consult on its proposed decision to accept, reject or amend each Customer Protection Code Change Proposal for a proportionate period of time taking due account of its complexity, importance and urgency. In the case of urgency, the consultation period will generally be for a minimum of [28] calendar days.

5.2.3 A consultation under Section 5.2.2 will be issued to each affected Retailer and any other person the Authority considers appropriate. Such consultations will have a clear mechanism for responding, and raising queries. In certain circumstances, in particular in relation to a decision pursuant to Section 5.2.1(d), the Authority shall support processes which enable users to discuss and develop complex modifications as well as collect and share any evidence with the Authority.

5.2.4 Following consultation responses the Authority will issue a final decision as soon as reasonably practicable including, where appropriate, the date on which the proposed change to this code shall take effect. The Authority's decision shall include the following:

- (a) the parties who raised the change proposal;
- (b) the reasons for the proposed changes;

- (c) the scope and impact of the potential change, including consideration of potential risks;
- (d) an evaluation against the Authority's statutory duties and code principles;
- (e) any relevant evidence considered; and
- (f) implementation timescales, which will take into account the likely impact on Retailers' existing systems and processes.

6. Obligations in relation to sales and marketing activities

6.1 Communications with Micro-businesses prior to submission of a Transfer Registration Application.

6.1.1 Before submitting a Transfer Registration Application in respect of a Micro-business or agreeing Terms and Conditions of Supply with a Micro-business (whichever is earlier), a Retailer shall provide the following information to the relevant Micro-business:

- (a) details of applicable prices, charges and/or tariffs (including whether or not they are inclusive of all costs and taxes (and any assumptions underlying the proposed prices, charges and/or tariffs) being offered by the Retailer to the Micro-business;
- (b) service levels that would apply in the Terms and Conditions of Supply being offered by the Retailer to the Micro-business;
- (c) the type, frequency of bills and payment methods available;
- (d) the duration of the Terms and Conditions of Supply being offered by the Retailer to the Micro-business, in particular the proposed expiry date;
- (e) contact details of the Retailer (including full name, address and a non-premium rate telephone number);
- (f) any rights that the Micro-business would have to cancel the Terms and Condition of Supply without any cost to them;
- (g) any rights that the Micro-business would have to cancel or terminate the Terms and Conditions of Supply that would incur costs or fees if exercised, including details of any such costs or fees;
- (h) a comparison between the Material Terms being offered under the proposed Terms and Conditions of Supply and either:

- (i) the Retailer's Scheme of Terms and Conditions required by the Exit Regulations (where the Retailer is a Licensee); or
- (ii) the Retailer's statutory duties to supply (where the Retailer is a relevant undertaker),

if different.

6.1.2 Before submitting a Transfer Registration Application in respect of a Micro-business, the Retailer shall ensure that it has received either:

- (a) [written] acknowledgement from the relevant Micro-business that it has read and understood the information provided to it pursuant to Section 6.1.1; or
- (b) a copy of the Terms and Conditions of Supply, signed by or on behalf of the relevant Micro-business.

6.2 Cooling off Period for Micro-businesses.

6.2.1 Other than where the Terms and Conditions of Supply are the a Scheme of Terms and Conditions or the statutory duties of a relevant undertaker, a Micro-business shall be entitled to cancel or terminate the Terms and Conditions of Supply acknowledged or agreed pursuant to Section 6.1.2 at no cost to the Micro-business by serving a Cancellation Notice on the Retailer within seven calendar days of signature of the relevant acknowledgement or agreement.

6.2.2 A Retailer shall not submit a Transfer Registration Application in respect of a Micro-business within seven calendar days of receipt by the Retailer of the acknowledgement or agreement provided by that Micro-business pursuant to Section 6.1.2.

6.3 Third parties acting for Retailers.

6.3.1 Where Retailers use third parties to represent them in sales and marketing activities, they shall take all reasonable steps to ensure that these third parties are aware of, and understand and comply with, the provisions of this code.

6.4 Third parties acting for Non-Household Customers.

6.4.1 Where Non-Household Customers have any third party acting on their behalf, Retailers shall obtain written confirmation – known as a letter of authority – from the relevant Non-household Customers that:

- (a) the named third party is acting on their behalf;
- (b) the extent of the third party's authority; and
- (c) how the third party's fees are being paid.

6.4.2 Where the Non-Household Customer is also a Micro-business, the written confirmation shall be in the form of a template.

7. Provision of information by a retailer to its non-household customers

7.1 Provision of information to Non-Household Customers about Terms and Conditions of Supply.

7.1.1 Retailers shall be transparent with their Non-Household Customers about the Terms and Conditions of Supply which apply to them and any proposed changes to those Terms and Conditions of Supply.

7.1.2 Where Terms and Conditions of Supply are in writing, Retailers shall ensure they are in plain and clear language.

7.2 Provision of additional information to Micro-businesses about Terms and Conditions of Supply.

7.2.1 If the Terms and Conditions of Supply which are applicable to a Micro-business are changed, a Retailer shall ensure that the Micro-business is provided with the information listed in Section 6.1 as soon as reasonably practicable following the implementation of the change.

7.2.2 If a Micro-business requests to receive any information in writing, the Retailer shall provide this information as soon as reasonably practical.

7.2.3 If a Micro-business renews Terms and Conditions of Supply on their expiry, or the Terms and Conditions of Supply renew in accordance with Section 7.3.1, a Retailer shall ensure that the Micro-business is provided with the information listed in 6.1 as soon as reasonably practicable following the implementation of the renewal.

7.2.4 If the Terms and Conditions of Supply applicable to a Micro-business are due to expire, Retailers must write to the relevant Micro-business at least 30 calendar days prior to the expiry date advising them of the following:

- (a) the upcoming expiry of the Terms and Conditions of Supply and the expiry date;
- (b) whether the Micro-business can renew the Terms and Conditions of Supply on the same basis and, if so, how;

- (c) other Terms and Conditions of Supply available from the same Retailer (if any), in particular the Retailer's current charges;
- (d) the Information Template;
- (e) if the Micro-business is in a retail exit area, that the Authority can direct a Licensee to supply them on the terms contained in a Scheme of Terms and Conditions; and
- (f) if the Micro-business is not in a retail exit area, that a relevant undertaker may provide Terms and Conditions of Supply.

7.3 Terms and Conditions of Supply to Micro-businesses applicable for a fixed term only.

7.3.1 If a Retailer's Terms and Conditions of Supply to a Micro-business are for a fixed term:

- (a) the relevant Terms and Conditions of Supply may be not renewed automatically, without the written consent or request of the Micro-business. Any rollover would be for a maximum period of one year from the expiry of the initial fixed term period;

Pursuant to Section 7.2 the retailer shall inform the customer if they are not on the cheapest deal on the renewal notice.

- (b) there shall be no charge or fee payable by the Micro-business for early termination of the Terms and Conditions of Supply if those Terms and Conditions of Supply have been renewed pursuant to Section 7.3.1 or the customer provided the agreed termination notice.

8. Transfers of Non-Household Customers

8.1 Prevention of Erroneous Transfers.

8.1.1 An Incoming Retailer shall take all reasonable steps to prevent an erroneous transfer by ensuring they have valid Terms and Conditions of Supply with the relevant Non-Household Customer before they submit a Transfer Registration Application.

8.2 Cancellation Requests.

8.2.1 If an Outgoing Retailer submits a Cancellation Request, the Outgoing Retailer shall write to the affected Non-Household Customer explaining the reason(s) for submitting the Cancellation Request.

8.2.2 If the reason provided by the Outgoing Retailer for submission of the Cancellation Request include that there was an Outstanding Debt due to the Outgoing Retailer by the affected Non-Household Customer, the Outgoing Retailer shall provide the following additional information to the Non-Household Customer:

- (a) that the Non-Household Customer has 90 calendar days in which to raise a formal dispute with the Outgoing Retailer in relation to an Outstanding Debt before there is a Cancellation; and
- (b) how the Outstanding Debt can be repaid, in particular if a Reasonable Repayment Plan is available.

9. Billing

9.1 Information to be provided on each bill.

9.1.1 Each bill issued to a Non-Household Customer by a Retailer shall contain the Information Template.

9.2 Billing accuracy and frequency.

9.2.1 Outgoing Retailers shall base their final bill on the Transfer Read provided by the Incoming Retailer.

9.2.2 Retailers shall issue at least one accurate bill or invoice each year.

9.2.3 Where a supply is Metered, a physical Meter Read shall be taken at least once a year.

9.2.4 Retailers can choose to accept Meter Reads, including any Transfer Read taken by the relevant Non-Household Customer.

9.2.5 Any final bill to be issued to a Micro-businesses shall be issued within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply.

9.3 Restriction on Billing of Micro-businesses.

9.3.1 Retailers shall not bill or invoice Micro-businesses for or recover charges in respect of water supplied or sewerage services provided to that Micro-business before the start of the preceding Financial Year.

9.3.2 Retailers shall offer Micro-businesses a Reasonable Repayment Plan in respect of any part of a bill or invoice issued pursuant to Section 9.3.1 which relates the period prior to the 12 months preceding that bill or invoice.

10. Complaint handling and dispute resolution

- 10.1 Retailers must have in place at all times a readily accessible and an effective Complaints Handling Process at no cost to Non-Household Customers.
- 10.2 Each Retailer must comply with its Complaints Handling Process in relation to each complaint received from a Non-Household Customer.
- 10.3 A Complaints Handling Procedure must:
- 10.3.1 be in plain and clear language;
 - 10.3.2 allow for complaints to be made orally and/or in writing;
 - 10.3.3 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;
 - 10.3.4 describe any remedies available to the Non-Household Customer on resolution of a complaint. Such remedies must include but not limited to:
 - (a) an apology;
 - (b) an explanation;
 - (c) remedial action; and
 - (d) compensation payable to the Non-Household Customer where remedial action is not possible or is insufficient to deal with the complaint; and
 - 10.3.5 describe any right to refer the complaint to a Redress Scheme.
- 10.4 All Retailers shall have in place or participate in a Redress Scheme that is readily accessible to and effective for its Non-Household Customers.

11. Notices

- 11.1 All notices to be given under this Code shall be marked for the attention of the person or persons notified for that purpose from time to time.
- 11.2 All notices to be given to any party under this code shall be in writing.
- 11.3 A notice shall be treated as having been received:
- 11.3.1 if delivered by hand (including courier) within Delivery Hours, when so delivered; and if delivered by hand outside Delivery Hours, at the next start of Delivery Hours;
 - 11.3.2 if sent by first class pre-paid post, guaranteed next day delivery, post with delivery confirmation or receipt (for example, special delivery) on the later of actual receipt and 9.00 am on the Business Day after posting if posted on a Business Day, and on the later of actual receipt and 9.00 am on the second Business Day after posting if not posted on a Business Day; and
 - 11.3.3 if sent by e-mail, or any other electronic means during a Business Day it is received on that Business Day and if it is sent outside of a Business Day it is received on the following Business Day.
- 11.4 In proving that a notice has been given it shall be conclusive evidence to demonstrate that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

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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